Supreme Court, U. S.
FILED
AUG 20 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 76- 76-2551

HAZELWOOD SCHOOL DISTRICT; C.O. McDONALD, Superintendent; ROBERT BISCHOF, ROBERT COLEMAN, DOROTHY SMITH, CHARLES SWEENEY, DONALD MATTOX and MILTON STRAUSS, Members of the Board of Education of the Hazelwood School District,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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August 1976

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No. 76-

HAZELWOOD SCHOOL DISTRICT; C.O. McDONALD, Superintendent; ROBERT BISCHOF, ROBERT COLEMAN, DOROTHY SMITH, CHARLES SWEENEY, DONALD MATTOX and MILTON STRAUSS, Members of the Board of Education of the Hazelwood School District,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners, the Hazelwood School District, its Superintendent and the members of its Board of Education, pray that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Missouri, which is reported at 392 F. Supp. 1276, appears at Appendix A, pp. 1a-26a, *infra*. The

opinion of the United States Court of Appeals for the Eighth Circuit, which is reported at 534 F.2d 805, is reprinted at Appendix B, pp. 1b-32b, *infra*.

JURISDICTION

A divided panel of the court of appeals entered a judgment on April 20, 1976, reversing a judgment of the district court in petitioners' favor, and, on May 25, 1976, the court of appeals denied a timely petition for rehearing and suggestions for rehearing en banc. (Apps. C, D, *infra*). This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether Congress has authority under Section 5 of the Fourteenth Amendment to prohibit by Title VII of the Civil Rights Act of 1964 employment practices of an agency of a state government in the absence of proof that the agency purposefully discriminated against applicants on the basis of race.

2. Whether a court may disregard evidence that an employer has treated actual job applicants in a nondiscriminatory manner and rely on undifferentiated workforce statistics to find an unrebutted prima facie case of employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "SECTION 1. . . . No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.
>
> * * *
>
> "SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Title VII of the Civil Rights Act of 1964 provides in Section 703:

> **"(a) Employer practices.**
>
> It shall be an unlawful employment practice for an employer —
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2 (1970).

STATEMENT

The Hazelwood School District is an agency of the State of Missouri responsible for the organization and operation of free public schools within its boundaries. *See generally* Mo. Rev. Stat., Tit. XI (1969). Hazelwood is located at the northern tip of St. Louis County in what only several years ago was sparsely populated farming country. The Hazelwood School District was created between 1949 and 1951 from more than a dozen rural school districts, none of which provided instruction beyond the eighth grade. When the reorganized district was formed it operated eight schools, served a student enrollment of 811, and employed

27 faculty members. There were no black students and no black teachers at Hazelwood. (App. A, pp. 2a-3a).

Succeeding years brought change. School enrollment and faculty size grew dramatically; blacks joined the student body and, in small but increasing numbers, the faculty. By 1970 Hazelwood operated a system complete through high school, had a student enrollment of nearly 25,000, and employed 957 teachers. Two hundred and fifty of its students and six of its faculty members were black. The following school year Hazelwood's enrollment grew only slightly, but the number of its black students doubled to 576, and the size of its black faculty, nearly tripling, grew to 16. In 1973-74 Hazelwood increased the number of its black teachers to 22. (App. A, pp. 2a-3a).

Despite Hazelwood's efforts, required by paragraph 532.2 of its Policy Manual, to hire as teachers "the best possible certified persons within the financial ability of the district without consideration as to age, sex, race, national origin, political or religious beliefs" (R. 18)[1], the United States brought this action alleging violations of Title VII and the Fourteenth Amendment by Hazelwood in its hiring of teachers. The jurisdiction of the district court was invoked under 28 U.S.C. § 1345 and 42 U.S.C. § 2000e-6(b). The Government claimed that because 15 percent of all teachers in St. Louis County and St. Louis City together in 1970 were black, whereas only 2 percent of Hazelwood's faculty in 1973 were black, Hazelwood should be found to be discriminating illegally. (App. A, p. 18a).

1. The Opinion of the District Court

The district court rejected the Government's proposed 15 percent standard because it "is distorted by the inclusion of data from the St. Louis City district, which contains a much higher ratio of black teachers . . . ." (App. A, p. 19a). In-

[1] "R" references are to the pages of the Joint Appendix printed for use in the court of appeals.

deed, the St. Louis City school district, which employs over one-fourth of the teachers in the combined city-county area, consciously and deliberately maintains a faculty that is 50 percent black. St. Louis acknowledges that this fixed 50 percent quota is not based on the availability of black applicants for teaching vacancies or on the percentage of actual applicants for teaching positions there who are black. (R. 296).

The district court also found that for the 1971-72 school year Hazelwood had 3,127 applicants for 234 open faculty positions. In 1972-73 there were 2,373 applications for 282 teaching vacancies. (App. A, p. 4a). During this period, when Hazelwood hired only 7.5 percent of its total applicants in one year and 11.9 percent the next, the number of blacks on Hazelwood's faculty grew from six to 22, a net increase of 16. Sixteen successful applications out of a total of 71[2] show a hiring ratio for blacks of nearly 23 percent — more than twice the success rate for applicants overall.[3]

The trial court also found no evidence that Hazelwood acted discriminatorily in failing to hire the 55 unsuccessful black applicants identified by the Government at trial:

[2] Fifty-five unsuccessful black applicants were identified at trial. (App. B, p. 16b).

[3] Hazelwood's actual experience hiring black applicants may differ somewhat from this ratio of 16/71. The number of blacks hired in the 1971-72 and 1972-73 school years may well have exceeded 16, which is the figure for net increases in the black faculty. Despite the Government's careful discovery and preparation in this case, it is also possible that there were unsuccessful black applicants who were not identified at trial. On the other hand, some of the 55 black applicants who were identified at trial did not apply for employment in 1971-72 or 1972-73, the school years during which the number of black faculty members grew from 6 to 22, but rather in 1973-74, a year for which the record in this case does not include data regarding the number of new black teachers hired by Hazelwood. (App. A, pp. 7a-16a). In any event, there is no reason to think that Hazelwood's actual experience in hiring black applicants in 1971-72 and 1972-73 was materially different from the 22.5% figure established from the evidence introduced at trial.

> "With regard to those black teachers who testified that they were interviewed but not offered a position, a review of the qualifications of those teachers ultimately selected for each position shows that in every case where a comparison is possible the district's choice is readily explainable on valid, nondiscriminatory grounds." (App. A, p. 24a).

2. The Opinion of the Court of Appeals

The court of appeals ignored the statistics showing that Hazelwood hired black applicants at twice the rate of whites and articulated the controlling legal standard as follows:

> "The law is well-settled that the relevant consideration in an employment discrimination case is the statistical disparity between the proportion of blacks in the employer's workforce and the proportion of blacks in the labor market." (App. B, p. 11b) (citations omitted).

In applying this standard the court accepted the Government's claim that the relevant geographical market should be St. Louis City and St. Louis County combined. It relied on census figures showing that 15 percent of elementary and secondary school teachers in that combined area were black in 1970 (App. B, p. 10b) and held that the disparity between this and the comparable figure for Hazelwood in 1973, 2 percent, established a "*prima facie* case of a pattern or practice of employment discrimination in violation of Title VII" (App. B, p. 14b), which Hazelwood had not rebutted.

The court of appeals also found an unrebutted prima facie case of discrimination against 16 of the 55 blacks who applied unsuccessfully for teaching positions at Hazelwood,

once again in violation of Title VII. (App. B, pp. 17b-25b). The court reversed the judgment of the district court and remanded, ordering wide-ranging, specific injunctive relief. (App. B, pp. 26b-28b).[4] The court made no finding of any discriminatory purpose motivating Hazelwood's employment practices, and it did not find a violation of the Fourteenth Amendment. Chief Judge Gibson dissented. (App. B, pp. 28b-32b).

REASONS FOR GRANTING THE WRIT

This case raises two important questions. The first is whether Section 5 of the Fourteenth Amendment empowers Congress to interfere with a state's employment practices through Title VII of the Civil Rights Act of 1964 in the absence of proof of a discriminatory purpose. The second is what standards of statistical proof must be met in order to establish a prima facie case of employment discrimination under Title VII where the employment in question demands extraordinary qualifications.

1. The decision of the court of appeals was that a public school district, an agency of a sovereign state, can be held to have violated the Civil Rights Act of 1964 on the basis of a statistical showing of a disparity between the proportion of its teachers who are black and what the court thought

[4] The court of appeals ordered that the injunctive relief against Hazelwood include (1) a permanent injunction against further discrimination, (2) promulgation of job descriptions and hiring criteria, (3) inclusion in recruiting and application materials of requirements for teaching positions and procedures by which selections are made, (4) equal notice of available openings to all applicants, (5) visits to predominantly black colleges and other institutions in any recruiting, (6) assurance of student-teaching opportunities for black college students, (7) periodic reports to the Justice Department for three school years, (8) maintenance for three years of a record explaining selection of any white applicant over an available black, (9) offer to 16 previously unsuccessful black applicants of first available teaching positions for which they are qualified, and (10) back pay. (App. B, pp. 26b-28b).

was the proportion of blacks among the prospective teachers available to it. The prima facie violation of Title VII found by the court of appeals here was proved by the statistical "disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the relevant labor market. . . ." (App. B, p. 14b). The legality of the decision of the court of appeals is cast in the gravest doubt by two decisions handed down in the closing days of last term, *Washington v. Davis*, 44 U.S.L.W. 4789 (U.S. Sup. Ct. No. 74-1492, June 7, 1976), and *National League of Cities v. Usery*, 44 U.S.L.W. 4974 (U.S. Sup. Ct. Nos. 74-878 and 74-879, June 24, 1976).

In *National League of Cities v. Usery* the Court, overruling *Maryland v. Wirtz*, 392 U.S. 183 (1968), held that Congress is not empowered by the Commerce Clause to impose on states acting "in their capacities as sovereign governments," 44 U.S.L.W. at 4979, rules governing the way they treat their employees. The statute whose application to state and local political entities was held unconstitutional in that case is the Fair Labor Standards Act of 1938.[5] Clearly Congress has no more power under the Commerce Clause to interfere with the exercise of a state's sovereignty by dictating whom the state may hire than by dictating minimum wages, maximum hours and overtime rules for those it does hire.[6] Thus, Title VII of the Civil Rights Act cannot be defended as an exercise of the commerce power when the act is applied to states and their local subdivisions.

There is no doubt that such a showing of statistical disparity as was made in Hazelwood's case would, if the

[5] *As amended*, 29 U.S.C. § 201 *et seq.* (1970 and Supp. II, 1972).

[6] This case illustrates just how burdensome interference with a state's hiring decisions can be. Hazelwood has been subjected to a broad injunction that includes, among other things, a three-year requirement for the generation and maintenance of special records and a three-year requirement for periodic reports to the Department of Justice. (App. B, p. 27b).

statistical analysis were valid, support a finding of a prima facie violation of Title VII by an employer other than a state body. However, in the light of *National League of Cities*, if the application of Title VII to a state body can be sustained, it can only be as an exercise of Congress' seldom-used power under Section 5 of the Fourteenth Amendment "to enforce, by appropriate legislation, the provisions" of the amendment.[7] The relevant provision of the Fourteenth Amendment that Congress undertook to enforce by application of Title VII to state bodies is the Equal Protection Clause. In the other pertinent decision of last term, *Washington v. Davis*, the Court ruled that there is a distinction between the kind of showing of discriminatory effect that, as indicated above, will satisfy the Civil Rights Act and the kind of showing necessary to make out a violation of the Equal Protection Clause itself. A "proof of discriminatory racial purpose," 44 U.S.L.W. at 4794, which ordinarily cannot be inferred from statistics showing a discriminatory effect alone, is required when the claim is a constitutional claim of denial of the equal protection of the laws.

In this case, as pointed out *infra*, pp. 14-21, the finding even of discriminatory effect is erroneous because it is based on invalid statistical analysis. But even if the statistics that the court of appeals relied upon were valid, *Washington v. Davis* makes clear that this type of evidence, which at most shows that the challenged employment practices had a "racially differential impact,"[8] 44 U.S.L.W.

[7] The authority of Section 5 was invoked when the Civil Rights Act of 1964 was amended in 1972 to make it applicable to state and local governmental units. *See* Fitzpatrick v. Bitzer, 44 U.S.L.W. 5120, 5122 n.9 (U.S. Sup. Ct. Nos. 75-251 and 75-283, June 28, 1976) and authorities cited therein.

[8] Indeed, the statistics that establish such a prima facie case may reflect only that a smaller percentage of qualified blacks than whites applied for teaching positions at Hazelwood because the demand elsewhere for black employees was so great that there were few blacks left to apply at Hazelwood. *See* discussion *infra*, pp. 18-19.

at 4792, does not, standing alone, demonstrate a violation of the Equal Protection Clause. *Id.* at 4793.[9]

Thus, the decision below poses the question whether a statute is "appropriate" legislation under Section 5 if it expands on the prohibition of the Equal Protection Clause rather than simply enforcing it. This question was addressed by the Court but not resolved, except as to the particular facts there at issue, in *Katzenbach v. Morgan*, 384 U.S. 641 (1966). There the Court upheld under Section 5 a Congressional prohibition of New York's English literacy requirements for voters educated in Spanish-speaking schools in Puerto Rico, without finding it necessary to engage in a close analysis of whether, independent of the statute, the Court would have held that these literacy requirements were forbidden by the Equal Protection Clause itself.[10] The Court did say:

> "[W]e perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in

[9] The court of appeals based its decision here wholly on Title VII, which first applied to the Hazelwood School District on March 24, 1972. (App. B, p. 8b.n.4, *citing* the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, §2, 86 Stat. 103, *amending* 42 U.S.C. § 2000e(f) (1970)). The court of appeals noted the existence of evidence regarding periods prior to that date, including the fact that schools in Missouri were segregated before the 1954 decision of this Court in Brown v. Board of Education, 347 U.S. 483 (App. B, pp. 3b-4b) but, significantly, the court in this case did not find any purposeful discrimination by Hazelwood in violation of the Equal Protection Clause.

[10] The requirements were contained in § 4(e) of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(e) (1970). The Court had previously found North Carolina's literacy requirement not on its face violative of the Fourteenth Amendment in Lassiter v. Northhampton County Board of Elections, 360 U.S. 45 (1959).

> violation of the Equal Protection Clause." 384 U.S. at 656.

Moreover, the Court noted that Congress' prohibition of the denial to Puerto Ricans educated in Spanish of the right to vote was enacted "in the context of a general appraisal of literacy requirements for voting, see *South Carolina v. Katzenbach*, [383 U.S. 301 (1966)], to which [Congress] brought a specially informed legislative competence . . . ." 384 U.S. at 655-56 (footnote omitted).[11]

Katzenbach v. Morgan, then, stands necessarily only for the proposition that where an informed and proper basis exists for Congress to determine that specific state conduct is in fact "invidious discrimination in violation of the Equal Protection Clause," 384 U.S. at 656, a Congressional prohibition of that conduct may be sustained under Section 5 without this Court's having fully to satisfy itself that the conduct violates the Equal Protection Clause.

This Court's decision in *Oregon v. Mitchell*, 400 U.S. 112 (1970), indicates that the rationale of *Katzenbach v. Morgan* does not sustain the application of Title VII to Hazelwood in this case. In *Oregon v. Mitchell* the Court split sharply on the scope of Section 5 as applied to legislation lowering the voting age to 18, barring literacy tests, and prescribing requirements for presidential elections.[12] Five Justices, however, agreed that the provision of

[11] In *South Carolina v. Katzenbach* the Court had upheld the constitutionality of selected other sections of the Voting Rights Act of 1965, finding that

> "various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered in a discriminatory fashion for many years." 383 U.S. at 333-34 (footnote omitted).

[12] *Compare* Oregon v. Mitchell, 400 U.S. 135, 141-50 (1970) (Douglas, J., concurring in part and dissenting in part); and *id.* at 248-

(continued)

the Voting Rights Act Amendments lowering the voting age to 18 in state elections could not be upheld under Section 5. Although Congress had determined that this legislation was necessary to remedy denials of equal protection of the laws, the majority of the Court ruled that Congress' authority to enact remedial legislation under Section 5 had to yield to the conflicting constitutional principle that the states retain the power to regulate their own local elections.[13]

Katzenbach v. Morgan and *Oregon v. Mitchell*, then, compel the conclusion that, given the distinction drawn in *Washington v. Davis* between a sufficient statutory showing of discrimination and the required constitutional showing, when Title VII is applied to a state agency such as the Hazelwood School District it is not "appropriate" legislation under Section 5.[14] Congress has not in Title VII

[12] (continued)
50, 278-81 (Brennan, White and Marshall, J.J., concurring in part and dissenting in part) *with id.* at 126-31 (Black, J.); *id.* at 152, 204-09 (Harlan, J., concurring in part and dissenting in part); and *id.* at 286, 296 (Stewart and Blackmun, J.J., and Burger, C.J., concurring in part and dissenting in part).

The legislative provisions involved are contained in Titles II and III of the Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 314, *amending* 42 U.S.C. § 1973 *et seq.* (1970).

[13] Oregon v. Mitchell, 400 U.S. 112, 124-31 (Black, J.) (1970); *id.* at 154-213 (Harlan, J., concurring in part and dissenting in part); *id.* at 293-96 (Stewart and Blackmun, J.J., and Burger, C.J., concurring in part and dissenting in part).

[14] Fitzpatrick v. Bitzer, 44 U.S.L.W. 5120 (U.S. Sup. Ct. Nos. 75-251 and 75-283, June 28, 1976), which sustained an award of backpay against a state agency under Title VII of the Civil Rights Act of 1964, does not suggest a different conclusion. In that case, as the Court noted, the respondents did "not contend that the substantive provisions of Title VII as applied here are not a proper exercise of congressional authority under § 5 of the Fourteenth Amendment." *Id.* at 5123 n.11. Here that contention is made. Mr. Justice Stevens questioned in that case whether extension of Title VII to the states could be upheld under § 5, because he was "not sure that the 1972 Amendments were 'needed
(continued)

narrowly singled out and prohibited a particular discriminatory state practice. Rather, it has indiscriminately sought to prohibit both instances of invidious, purposeful discrimination forbidden by the Equal Protection Clause, and conduct in which no discriminatory intent, and thus no violation of the Equal Protection Clause, is involved. Because Title VII as construed and applied here is directed at something other than purposeful state action to deny the equal protection of the laws, the statute is neither necessary nor appropriate under Section 5 for the enforcement of the Equal Protection Clause.

Moreover, as in Congress' effort to lower the voting age in state elections to 18, voided by the Court in *Oregon v. Mitchell*, extension of Title VII to the states runs flat against the conflicting constitutional principle of federalism. *Compare National League of Cities v. Usery.* Under these circumstances Section 5 of the Fourteenth Amendment provides no authority for Congress to enact the challenged legislation.[15]

[14] (continued)
to secure the guarantees of the Fourteenth Amendment,' see *Katzenbach v. Morgan*, 384 U.S. 641, 651 . . . ." *Id.* at 5124 (Stevens, J., concurring).

The important question of what limits there are to Congress' power to enact remedial legislation under Section 5 has been addressed at length in commentaries on the Fourteenth Amendment. *E.g.*, Cohen, *Congressional Power to Interpret Due Process and Equal Protection*, 27 Stan. L. Rev. 603 (1975); Orloski, *The Enforcement Clauses of the Civil War Amendments: A Repository of Legislative Power*, 49 St. John's L. Rev. 493 (1975); Note, Estreicher, *Federal Power to Regulate Private Discrimination: The Revival of the Enforcement Clauses of the Reconstruction Era Amendments*, 74 Colum. L. Rev. 449 (1974); Emerson, *Congress' Power to Enhance the Civil War Amendments*, 49 Notre Dame Lawyer 544 (1974).

[15] Petitioners did not claim below that Title VII cannot constitutionally be applied to a state agency without proof that the agency intended to discriminate in its employment practices. Washington v. Davis, 44 U.S.L.W. 4789 (U.S. Sup. Ct. No. 74-1492, June 7, 1976), and
(continued)

2. If Congress had the power under Section 5 of the Fourteenth Amendment to apply Title VII to Hazelwood in the absence of proof of any discriminatory purpose, Hazelwood would at least be entitled to a judgment whether its employment practices had a discriminatory effect based on valid, relevant statistical evidence.[16] *Compare Mayor of Philadelphia v. Educational Equality League*, 415 U.S. 605, 620-21 (1974). This principle is nowhere more important that in a Title VII case involving a school district, because it is virtually impossible for a school district to rebut a prima facie statistical case of discrimination under that act.

Standards for hiring teachers must necessarily be flexible, and they are difficult, if not impossible, to articulate. Each decision whether to hire an applicant ultimately requires a judgment, to some degree subjective, by the school principal or other official charged with the responsibility for filling the vacancy involved. The demands of teaching positions vary from school to school, grade to grade, and subject to subject, even from classroom to classroom and year to year. There is no way to establish any

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[15] (continued)
National League of Cities v. Usery, 44 U.S.L.W. 4974 (U.S. Sup. Ct. Nos. 74-878 and 74-879, June 24, 1976), were both decided after the court of appeals denied on May 25, 1976, the petition for rehearing and suggestions for rehearing en banc in this case. In *National League of Cities* the Court overruled one of its own precedents, a precedent that, standing unimpaired on the books while Hazelwood's case was tried and argued on appeal, would have made it futile to argue that Title VII could not constitutionally be applied to states and their political subdivisions. In *Washington v. Davis* the Court decided a question that had not been briefed and the Court acknowledged that prior decisions looked the other way, 44 U.S.L.W. at 4791-93; that opinion too was a surprise to litigants. In these circumstances petitioners here are at a minimum entitled to a remand to permit them to raise this issue before the court of appeals. *Cf., e.g.*, Torrance v. Callenius, 369 U.S. 658 (1962).

[16] The data involved are those for the school years 1972-73 and 1973-74. *See* discussion *supra*, pp. 5, 10.

single standard to assess skills in such a complex situation, and the hiring of teachers must ultimately be controlled by personal, human judgments that are in some measure subjective.

Thus, when a school district is charged with discrimination in violation of Title VII, no objective test results can ever be available to justify individual hiring decisions. If a prima facie case of discrimination is established by statistics, the school district must necessarily rely in its rebuttal efforts solely upon evidence regarding the personal, human judgments it has made in hiring its faculty. Where a court refuses to accept evidence regarding the application of those subjective standards in rebuttal of the prima facie case, the school district's cause is all but lost. Here the court of appeals did that and more: it deemed the mere existence of such subjective standards " 'to corroborate, not to rebut' " the charge of discrimination. (App. B, p. 14b). In these circumstances the need for the court's controlling statistical analysis to be based on valid, relevant data is urgent.

The defective statistical case made out by the court of appeals here illustrates the general problem that courts have in dealing with statistics in Title VII cases. For example, the nature of the statistical data and the treatment of them in *Chance v. Board of Examiners*, 330 F. Supp. 203 (S.D.N.Y. 1971), *aff'd*, 458 F.2d 1167 (2d Cir. 1972), and *Stamps v. Detroit Edison Co.*, 365 F. Supp. 87 (E.D. Mich. 1973), *rev'd and remanded on another issue sub nom. EEOC v. Detroit Edison Co.*, 515 F.2d 301 (6th Cir. 1975), contrast sharply with the nature of the data and their treatment by courts of appeal in two cases awaiting argument this term, *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40 (5th Cir. 1974), *cert. granted*, 44 U.S.L.W. 3670 (U.S. Sup. Ct. No. 75-718, May 24, 1976), and *United States v. T.I.M.E.-D.C., Inc.*, 517 F.2d 299 (5th Cir. 1975), *cert. granted*, 44 U.S.L.W. 3669 (U.S. Sup. Ct. No. 75-672, May 24, 1976).

We believe that consideration of the present case, in which the judgment of the court of appeals rests upon a statistical analysis that is plainly defective in at least three respects, would give the Court a useful additional perspective that would illuminate the issues regarding the use of statistics that it will in any event be considering in the cited cases.

(a) Ignoring statistical data showing that Hazelwood hired nearly 23 percent of the blacks who applied for teaching positions in the relevant period, a rate more than double the figure for applicants overall, the court of appeals in this case relied on

> "the statistical disparity between the proportion of blacks in the employer's workforce and the proportion of blacks in the labor market" (App. B, p. 11b)

and determined that the Government had made out a prima facie case of illegal discrimination by Hazelwood against black applicants.

However relevant workforce statistics may be in a Title VII case involving alleged racial discrimination where there is no record of actual black applicants and the rate at which they are hired, if direct evidence of the treatment of applicants is available, these data, and not general workforce statistics, are necessarily controlling. This is so because the most direct evidence about discrimination in hiring relates to actual unsuccessful applicants. Workforce statistics are but a surrogate for applicant-flow data; they are necessarily less reliable than evidence regarding actual applicants because in order to be relevant they require the inference that the proportion of blacks in the pool of applicants for the jobs at issue has been the same as the share of the overall labor market held by blacks. If the applicant-flow data clearly show an absence of discrimination against

blacks at the same time that workforce statistics seem to lead to a different conclusion, the applicant-flow evidence must control, at least if, as here, the record shows both that blacks have actually applied for jobs and that a substantial number have been successful—where, in short, there is no indication that applications from blacks have been discouraged. On the record in this case the finding of discrimination by the court of appeals on the basis of workforce statistics is clearly erroneous. *Compare Chance v. Board of Examiners, supra,* 330 F. Supp. at 209.

(b) Moreover, if workforce statistics were somehow relevant here, the undifferentiated data relied on by the court of appeals are demonstrably incorrect. Both the 15 percent figure that the court accepted as the black share of the overall St. Louis labor market and the 2 percent figure taken for Hazelwood are invalid.

The court of appeals correctly noted that

> "caution is necessary when using statistical evidence to analyze . . . disparities in employment figures for professional and academic positions. The raw data often will obscure the actual number of persons in the general workforce, white and black, who possess the special qualifications needed for particular openings." (App. B, p. 8b n. 5).

Census figures corroborate this judgment, for they show that whereas blacks constituted 19 percent of the total population of St. Louis City and St. Louis County together in 1970,[17] blacks made up only 6.4 percent of the population there with at least four years of college

[17] 299,847 of 1,573,587 inhabitants there were black. (U.S. Bureau of Census, U.S. Census of Population: 1970, General Social and Economic Characteristics, Missouri ("1970 Missouri Census"), Tables 81 (p. 27-283), 91 (p. 27-323), 119 (p. 27-431), 125 (p. 27-486)). (*See* R. 872, 875, 878; App. A, p. 18a.).

education,[18] a minimal qualification required of all applicants for teaching positions in public schools.[19]

This 6 percent figure is a direct, if necessarily imprecise, measure of the black proportion of the labor market in the St. Louis area that is educationally qualified to teach. The 15 percent figure adopted by the court of appeals, on the other hand, states only the proportion of teachers in the area who are black and simply ignores the question at issue: what share of persons in the St. Louis area who are educationally qualified to teach, and who might reasonably have applied for teaching positions at Hazelwood, are black?

Interestingly enough, the data underlying the 15 percent figure show that one-half of the blacks in St. Louis City and St. Louis County combined who have four years of college education are employed as teachers.[20] The comparable

[18] Out of a total of 92,733 persons in the combined city-county area who had completed four years of college in 1970, 5,946 were black. (1970 Missouri Census, Tables 83 (p. 27-291), 91 (p. 27-323), 120 (p. 27-441), 125 (p. 27-486)). (*See* R. 875, 879, 883.).

[19] There is no dispute here that the requirement of a college degree is properly and necessarily related to the performance of teaching duties. *Compare* Griggs v. Duke Power Co., 401 U.S. 424 (1971), where a requirement that applicants have a high school diploma or pass a general intelligence test was determined not to be related to the performance of the jobs at a steam generating plant for which the requirement applied.

[20] In 1970 there were 2,997 black teachers in St. Louis City and St. Louis County out of a total of 5,946 blacks there who had at least four years of college education. (1970 Missouri Census, Tables 91 (p. 27-323), 93 (p. 27-331), 125 (p. 27-486), 127 (p. 27-494)). (*See* R. 875-76, 883-84; App. A, pp. 18a-19a.).

figure for non-blacks is only about one-fifth,[21] and, if anything, these data suggest a reason why only 71 blacks applied for teaching positions at Hazelwood during the 1972-73 and 1973-74 school years: so many of the limited number of blacks with four years of college education had already been hired into the teaching profession elsewhere that there were simply very few qualified blacks available to apply for positions at Hazelwood.

In addition, the black share of total teachers in the St. Louis labor market is seriously distorted by inclusion of figures for St. Louis City, which in 1970 employed nearly three-fourths of the black teachers in the area including St. Louis County, although city teachers constituted only about one-quarter of the total number of teachers in the combined area.[22] The city figures result from application of a fixed 50 percent quota that is not determined by reference to the availability of black applicants in the St. Louis labor market. Indeed, since in 1970 the city had to absorb fully half of all blacks in the combined city-county area who had completed four years of college in order to hire its 2,182 black teachers,[23] the only reasonable inference is that the

[21] In 1970 there were 16,428 non-black teachers in St. Louis City and St. Louis County out of a total there of 86,787 non-blacks who had at least four years of college education. (1970 Missouri Census, Tables 83 (p. 27-291), 86 (p. 27-303), 91 (p. 27-323), 93 (p. 27-333), 120 (p. 27-441), 122 (p. 27-461), 125 (p. 27-486), 127 (p. 27-494)). (*See* R. 873, 875-76, 879, 881, 883; App. A, pp. 18a-19a.).

[22] There were 19,425 teachers employed in the combined area in 1970 and 2,997 of these were black. (1970 Missouri Census, Tables 86 (p. 27-303), 93 (p. 27-333), 122 (p. 27-461), 127 (p. 27-494)). (*See* R. 873, 877, 881; App. A, pp. 18a-19a.). 5,238 teachers were employed in St. Louis City, including 2,182 blacks, approximately 40% of the total (1970 Missouri Census, Tables 86 (p. 27-303), 93 (p. 27-333)). (*See* R. 873, 877; App. A, p. 18a.). By 1973 the city had increased the black proportion of its teachers to 50%. (R. 296).

[23] In 1970 the share of the city's teachers who were black was 40%, not the full 50% quota that the city reached by 1973. (App. A, p. 18a).

efforts of St. Louis City to achieve its 50 percent quota for black teachers require the city to make a disproportionately heavy draw on the available pool of qualified blacks, thereby decreasing the availability of black applicants for outlying districts like Hazelwood.

In any event, since the city's 50 percent quota does not reflect the availability of blacks among potential qualified applicants in the combined city-county area, it provides no evidence whatever about the racial balance of the pool of qualified persons available to apply for teaching positions at Hazelwood. Yet it is a very substantial component of the 15 percent overall figure on which the court below relied. Because the quota has such a significant effect on the overall racial balance of teaching faculties in the combined area, this 15 percent statistic is irrelevant and misleading.

(c) The 2 percent figure taken by the court of appeals as the relevant black share of Hazelwood's teaching faculty is also mistaken, because it is derived from a comparison of the number of black teachers in the Hazelwood system in the 1973-74 school year, 22, with the total of 1,231 teachers there that year. (App. B, p. 4b). This ratio might be relevant if the issue here involved Hazelwood's employment practices over the past several decades.[24] As applied to the Hazelwood School District, Title VII deals, however, only with the more recent period beginning in March of 1972.[25]

[24] The 2% figure is necessarily an estimate because, although it reflects the race of all teachers hired, the totals are net of reductions by retirement, resignation, death or other cause.

[25] Evidence regarding practices prior to the application of Title VII can be relevant in certain circumstances. As the Court pointed out in Griggs v. Duke Power Co., 401 U.S. 424, 430 (1971), this may be so when present practices preserve the effects of prior discrimination. This situation can arise, for example, in cases involving promotion, transfer, or seniority rights for employees. The present case, however, involves only hiring, and accordingly there is no issue here regarding preservation of the effects of past discrimination. The suggestion by the court of appeals that pre-1972 experience is relevant in this case (App. B, pp. 3b, 9b) is without support in either logic or precedent.

During that period Hazelwood's teaching staff grew from 957 to 1,231 (App. A, p. 3a), and the number of its black teachers increased from six to 22. Thus, the net increase in black teachers, 16, during this period was 6 percent of the overall increase of 274. As pointed out, *supra*, pp. 17-18, 6 percent is also the share that is black of the population in St. Louis City and St. Louis County combined who have four years of college education. Moreover, blacks make up 6 percent of the total number of teachers in St. Louis County (App. A, p. 19a), *i.e.*, that part of the area whose workforce the court below looked to where figures are not distorted by St. Louis City's 50-50 racial quota.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 1976

APPENDIX A

UNITED STATES of America,
Plaintiff,

v.

HAZELWOOD SCHOOL DISTRICT et al.,
Defendants.

No. 73C 553 (A).

United States District Court,
E.D. Missouri, E.D.
April 11, 1975.

MEMORANDUM OPINION

HARPER, District Judge.

This "pattern and practice" suit was brought by the Attorney General on behalf of the United States, seeking relief from alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Fourteenth Amendment. The Court has jurisdiction pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 2000e-6(b).

Defendants, Hazelwood School District, its superintendent and members of the Hazelwood Board of Education, are charged with maintaining a number of employment practices which have the effect of discriminating against black applicants for employment in faculty and staff positions with the Hazelwood District. The various individual claims of the plaintiff may be summarized as follows: (1) The district has not taken affirmative steps to overcome the discriminatory effects of previously operating a purportedly dual school system; (2) evidence of employment statistics establishes a prima facie case of racial discrimination; (3) defendants utilize recruiting and in-

terview techniques which are discriminatory per se; and (4) during recent school years defendants failed to hire numerous black applicants who were better qualified for vacant teaching positions than were the white applicants ultimately chosen to fill those positions. Plaintiff requests that the Court order imposition of numerical hiring quotas, institution of an affirmative recruitment program aimed at attracting black applicants, development of non-discriminatory employment criteria, and individual offers of employment with back pay to black applicants who were refused employment.

A rudimentary description of the location and history of Hazelwood School District is contained in a pre-trial stipulation filed by the parties. The district covers 78 square miles in northernmost St. Louis County. It was formed from thirteen rural school districts between 1949 and 1951 by process of annexation. At that time the district maintained eight schools with an enrollment of 811 and a faculty of 27. For the school year 1954-1955 the same eight schools remained in existence and the ninth grade of a future four-year high school was initiated.

The first realization that black students might be present in the district apparently came in 1954. The minutes of the Hazelwood Board of Education show that the superintendent informed the Board on November 20, 1954, that blacks had rented property in the district, but that he no knowledge as to whether they had children of school age. The Board instructed the superintendent to admit any children of black residents, but "in view of their being so decidedly in the minority * * * to offer payment of tuition to negro pupils to a school of more predominantly negro enrollments." (Plf's Ex. 57).

Plaintiff's Exhibit 55 discloses that by the 1967-68 school year the total enrollment in the Hazelwood District was 17,550, of which 59, or approximately one-third of one percent, were black. For the year 1970-71 there were a total of

24,256 students in the Hazelwood system. Black students during that year numbered 250, or one percent of the total enrollment. During 1972-73 defendant had a black enrollment of 576, which was approximately two percent of the total 25,166 students in attendance.

Hazelwood did not hire its first black teacher until the 1969-70 school year (Hord Dep. 45-46). During the 1970-71 school year the district employed six black teachers out of a staff of 957. In the fall of 1972 defendants' teaching staff numbered 1,107, out of which 13 were black (Plf's Ex. 55). The black teaching staff was increased to 16 by the end of that school year. For the year 1973-74 defendant maintained a full-time professional faculty of 1231, of which 22 were black (Plf's Ex. 55).

J.W. Hord, personnel director for the Hazelwood schools since 1962, stated that he is the only person involved in the recruiting of teachers (Hord Dep. 9). When he first came to the Hazelwood district most of its teachers came from Southeast Missouri State Teachers College (Hord Dep. 11). He stated that at that time there was a "tremendous shortage" of teachers and that the heavy recruiting at Southeast Missouri State occurred because the Hazelwood staff had many contacts at that college. Hord was instructed to try to attract teachers from other colleges and universities in order to obtain a broader distribution of schools. Thereafter, the district recruited at numerous colleges, selected primarily for their availability of candidates and proximity to St. Louis (Hord Dep. 9). The list of schools includes many of those in Missouri as well as a few from Illinois, Arkansas, Kansas and Oklahoma (Defendants' Answer to Plaintiff's Request for Admission No. 46). All of the colleges listed have predominantly white student bodies. During the period in question Missouri had two four-year colleges, Lincoln University and Harris Teachers College, which offered teaching degrees and which had a substantial number of black students (Plf's Ex. 51). Hazelwood district

did not do any recruiting at Harris Teachers College. Hord made one visit to Lincoln University in 1963 or 1964, where he inquired as to prospective teacher candidates. He stated that the reaction from the placement director was "not very favorable" because of the teacher shortage which existed at the time (Hord Dep. 8). At the trial Hord testified that while it was necessary to "search constantly" to find teachers in the early 1960's, today the district has 2300 applications on file and has reduced its recruiting efforts (Tr. 38). For the 1971-72 school year Hazelwood had 3,127 applicants competing for 234 teaching vacancies (Tr. 358); the following year there were 2,373 applications filed and only 282 openings.

Employment applications are sent to everyone requesting them (Hord Dep. 12). Candidates are requested to furnish information concerning their activities, experience with youth organizations, education, prior teaching experience, extent of reading and travel, and additional related training. Formerly the application forms contained spaces for nationality, religion and a picture of the applicant. This practice was officially discontinued in 1954 (Kirby Dep. 56-57), although some application forms still contained space for designating the applicant's race until the 1962-63 school year (Defendants' Answer to Plaintiff's Interrogatory No. 12, March 1, 1974). Each fall the district asks all applicants to update their files; any that are not so updated are destroyed (Tr. 35).

When the personnel office is notified of vacancies within the district, they contact applicants to arrange for interviews (Hord Dep. 13). At one time every applicant was notified of each vacant position, but with the large number of applications on file today the district first notifies those applicants who have recently come to the attention of the personnel office or who have otherwise informed the district of their continuing availability (Hord Dep. 14-15). The personnel office checks to see that each applicant has a

Missouri certification to teach. In certain fields, such as home economics, certification is required in a particular area of specialization within the applicant's field (Hord Dep. 16, 32-33; Huss Dep. 24). The only other minimum requirement for faculty positions is a health certificate (Defendants' Answer to Plaintiff's Interrogatory No. 6).

The practice at Hazelwood is to invite several applicants at a time to a group meeting with the elementary or secondary coordinator who describes the district to them. The applicants are then sent to one or more schools where vacancies exist. Actual interviews are conducted by the respective school principal or by a department chairman or program coordinator. The only instruction given to persons in charge of hiring is to obtain the "most competent" person available for the position (McDonald Dep. 18). There are no other specific standards for employment (McDonald Dep. 51). In addition to the information supplied on the candidate's application form, the interviewer relies on a number of intangibles such as personality, disposition, appearance, poise, voice, articulation, and ability to deal with people (Hord Dep. 25; Huss Dep. 24). Forms used by the interviewer contain spaces for evaluation of an applicant's personal attributes, including knowledge of teaching responsibilities, knowledge of subject area, personal appearance, voice, confidence, personality, attitude toward profession, etc. The applicant is rated as above average (or superior), average, or below average as to each of these traits. In addition, there is space provided for the interviewer's comments.

The most comprehensive explanation of how a teacher is selected appears in the deposition of Frank Fox, principal of Hazelwood Junior High School. He stated that he discusses vacancies with his assistants and department chairman in order to determine what sort of individual is required with respect to personality, philosophy of education, and how particular teaching situations need to

be handled (Fox Dep. 7). They then examine individual applicants in order to discover their background experience and type of activities in which they participated in school. Of particular interest are types of employment, both teaching and non-teaching, and contacts with youth groups such as Boy Scouts and Girl Scouts (Fox Dep. 7). Fox does not prefer a master's degree over a bachelor's degree and does not necessarily select the person with the most experience, placing more emphasis on the quality of the experience (Fox Dep. 8). Most other Hazelwood administrators likewise discounted the achievement of a master's degree. Persons with student or substitute teaching experience at Hazelwood are given preference if their performance was satisfactory. (Huss Dep. 29).

At the trial plaintiff called as a witness Rufus Young, director of personnel for the St. Louis City Board of Education. Young testified that the St. Louis school system employs a full time recruiter (Tr. 331), but that recruiting is generally limited to those teaching areas in which there is a shortage, such as industrial arts, science and math, special education and foreign languages (Tr. 335). The St. Louis City district tries to obtain the "best possible" teacher, but at the same time maintains a ratio of black teachers of about fifty-one percent (Tr. 332-333). He testified that the district had discussed basing this ratio alternatively on the racial balance of the city's population, the racial balance of the students in attendance in the district or on the present racial makeup of the faculty, but that no specific basis has been chosen. When applications are received by the St. Louis district they are reviewed by both a black and a white supervisor who rank them according to national teacher examination scores and other information available, such as years of teaching experience and highest degree attained (Tr. 347, 349). When the superintendent requisitions for a new teacher the personnel office furnishes several names from those applicants with higher rankings. The superintendent may indicate a preference for a black or white

teacher in order to "enhance staff balance" (Tr. 348). Interviewing is conducted by the individual school principals or others chosen by the superintendent. During the interview notice is taken of whether the person being interviewed has certain intangible assets which might cause him to be preferred over another applicant (Tr. 349). Young testified that other than certification, teaching experience, degree held, position applied for, and the other factors mentioned previously, the only objective, non-discriminatory procedure which could be used in selecting teachers would be testing, which is generally forbidden (Tr. 351).

Twenty-five black teachers testified at the trial that they applied unsuccessfully for positions at Hazelwood. In addition, plaintiff produced Hazelwood personnel records containing the applications of thirty-two other teachers who are claimed to be black and who applied for teaching or administrative positions at Hazelwood for 1972-73 and 1973-74, the years for which the district had retained personnel records prior to the trial. Twelve of these thirty-two applicants were subpoenaed and claimed their attendance in court, but were not called to testify at the trial.

Judith Ealy testified that she applied to Hazelwood on August 3, 1973 (Tr. 46). Although there was a vacancy in her field, business education, she did not have a vocational teaching certificate. The personnel director reviewed her transcript but told her that she lacked enough credit hours to obtain her vocational certification (Tr. 49). Miss Ealy had been employed by the St. Louis City school district for 1972-73, and she was re-employed in August of 1973 for the 1973-74 school year (Tr. 52, 54). She applied for a vocational certificate about a month prior to trial, but her application had not been acted upon as of the date of trial (Tr. 56).

Nikki Lenoir applied for a position as English teacher mid-August of 1973 but was not given an interview. She

testified that she was not surprised to learn that there were no openings at that time, since school was to start on about September 1st (Tr. 61). She has been working at either the St. Louis City or Kirkwood districts since September of 1973 (Tr. 62).

Pearlie Boyd graduated in business education in June of 1971. While working for another district she applied for a teaching position at Hazelwood in January or February of 1972 (Tr. 63), but was told that there were no openings at that time of year (Tr. 67). She has a general elementary and secondary Missouri certificate, but does not have a business education certificate (Tr. 64). In June of 1972, she began working as a business instructor for Manpower Business Training and was employed by the Frisco Railroad at the date of trial (Tr. 65).

Alice Moore Roach testified that she applied to Hazelwood on April 30, 1972 (Tr. 75), but had not yet applied for teaching certification at that time (Tr. 78). Mrs. Roach was subsequently employed by the St. Louis City district for the 1972-73 school year and was completing her second year there at the time of trial (Tr. 75).

Atry Cotton testified that he applied to teach special education at Hazelwood in July of 1970 but was not interviewed for a position (Tr. 80, 81). He stated that he didn't know at that time that St. Louis County had a centralized special education district rather than separate ones in each school district, although it was stipulated by plaintiff's counsel that this is the case (Tr. 84). Cotton is now teaching special education in the St. Louis City school district.

Alberta Riggs applied as a librarian or English or Biology teacher with the Hazelwood district on May 17, 1973 (Plaintiff's Ex. 34). Mrs. Riggs initially contacted Francis Huss, coordinator of secondary education, seeking interviews for herself and another black applicant, Mrs.

Gerst, who had experience as a reading teacher. Huss informed Mrs. Riggs that he had no vacancy in her field, English, but invited her to come in with Mrs. Gerst to interview for reading teacher (Huss Dep. 41). At the interview Huss was "very much impressed" with Mrs. Gerst, who was subsequently hired at Kirby Junior High School, but noted on Mrs. Riggs' interview form that she was "over critical and opinionated to the extent that she approached rudeness" (Plf's Ex. 34). Huss stated in his deposition that Mrs. Riggs expressed her disapproval of the school curriculum, the class schedule and the policy of requiring teachers to remain on the campus during lunch breaks (Huss Dep. 42-43). In addition, after reviewing her course work Huss determined that Mrs. Riggs was not qualified to teach reading, where the vacancy existed (Huss Dep. 42, 44). One month after she applied to Hazelwood Mrs. Riggs began teaching and taking course work at Southern Illinois University (Tr. 108).

Robert Howell testified that he applied for a position teaching social studies in May of 1971, but he enrolled at Webster College for the fall semester of that year (Tr. 109, 112). He served as a student teacher at Hazelwood for a semester while attending Webster College (Plf's Ex. 21) and reapplied for a permanent position at Hazelwood in March of 1973. Howell stated that he was aware that social studies is one of the most competitive of all teaching fields, and he applied to four other districts in addition to Hazelwood (Tr. 114, 115). He accepted a position with the St. Louis district where he was employed at the time of the trial (Tr. 115).

Melvin Lowe applied for a position teaching physical education on April 26, 1972, but did not receive Missouri certification to teach until October or November of 1972 (Tr. 117, 118). He has been employed by the St. Louis City School district since applying to Hazelwood (Tr. 117).

James Washington applied to Hazelwood on March 6, 1973 (Tr. 121). He testified that his college major was in

social studies and that he had a minor in physical education (Tr. 122). He was working as a substitute teacher at two other school districts at the time he applied to Hazelwood (Tr. 122) and continued in that capacity until February of 1974 (Tr. 123). Washington applied to seven or eight other school districts in addition to Hazelwood and stated that he knew there was an overabundance of applicants in the area of social studies (Tr. 124). In February of 1974 he located a permanent position teaching for the University City school district (Tr. 125).

Westelle Florez applied to the Hazelwood district in May or June of 1973 (Tr. 126). In August of 1973 Hazelwood officials telephoned her to see if she was available, but she had already signed a teaching contract with the Ferguson-Florissant district (Tr. 129).

Cullen Cook obtained a master's degree from Central State University in Oklahoma in June, 1972, and taught Junior College in Oklahoma until January, 1973 (Tr. 134). He did not apply to Hazelwood until August 16, 1973. He admitted that almost all teaching positions are filled by then, but stated that he made applications to as many St. Louis area districts as he could find hoping to get a position (Tr. 135). Cook testified in addition that his area, art, was a popular field (Tr. 136). Since September of 1973 he has worked as a substitute teacher at Kirkwood (Tr. 133).

Patricia Fletcher applied for a physical education position with Hazelwood in May of 1973 and was interviewed by the principal of Brown elementary school on June 19, 1973. Mrs. Fletcher testified that her undergraduate grade point average was 3.42 on a 4.0 scale (Tr. 150-151). The Brown position was offered to a white applicant on July 7, 1973. This applicant's grades were comparable to those of Mrs. Fletcher; she was awarded a scholarship in college, and was selected for publication in Who's Who in American Colleges and Universities. She was a graduate of Hazelwood High School and had been offered a position at Hazelwood for the 1970 school year, but turned it down to teach in another district (Plf's Ex. 2, Vol. V, pp. 583-599).

Cynthia Edmond applied for a position as social studies teacher on July 10, 1972, but was told that there were no vacancies in her field (Tr. 156). She renewed her application the following year but was not interviewed. No evidence was introduced concerning her current employment status.

Derek Novel likewise applied for a social studies teaching position. He filed applications on January 31, 1973, and again in March, but on both occasions received letters stating that there were no vacancies in that field (Tr. 159). Novel stated that social studies is "one of the more competitive fields in teaching today" (Tr. 166). The record does not disclose whether he is currently teaching school.

Naomi Cooksey filed an application on June 28, 1973, seeking a teaching position in "music education/Afro-American music" (Plff's Ex. 64), but was not offered an interview. She has been employed by the St. Louis City district since the fall of 1973 (Tr. 162). Plaintiff introduced evidence that Hazelwood hired two new music teachers for the 1973-74 school year (Plff's Ex. 2, Vol. IV p. 40; Vol. VIII p. 336; Defts' Ans. to Int. No. 1(a) of Feb. 4, 1974, and Int. No. 2 of August 17, 1973). One of these, Kenneth Heim, applied on May 20, 1973, and was interviewed by the department chairman on May 23rd, more than a month prior to Cooksey's application. The interviewer gave Heim excellent ratings in every category (Plf's Ex. 2, Vol. IV, p. 45). The other new music teacher, Faye Herman, applied on May 4, 1973, and was interviewed June 1st. She, too, was rated as excellent by her interviewer (Plf's Ex. 2, Vol. VIII, p. 342). The qualifications of both of these applicants based on the application forms were comparable to those of Mrs. Cooksey, and they had been interviewed and were already under consideration before Mrs. Cooksey filed her application.

Beverly Ellis applied for an elementary teaching position on August 4, 1972. She was interviewed by the principal of Brown Elementary School who rated her personal characteristics as "average" but did not recommend her for employment because her application form showed that she had held five different teaching positions during seven years of employment (Plf's Ex. 12). Miss Ellis was subsequently referred to the principal of Charbonier School, who interviewed her for a third grade position. The applicant who was ultimately offered the latter position had just finished working as a substitute teacher at Charbonier during the previous year (Plf's Ex. 2, Vol. V, pp. 39-40). Miss Ellis was working for the St. Louis City district at the time of her application to Hazelwood, and was still working there at the time of the trial (Tr. 171).

Samuel Downs applied for a position on May 24, 1972, as industrial arts teacher. The personnel director talked with Downs but told him that there would only be an opening if a teacher then on sabbatical leave failed to return (Tr. 177). He was not subsequently contacted by Hazelwood and is now teaching in the University City school district (Tr. 178).

Delores Penton filed an application for a kindergarten or elementary level position on June 21, 1973, but was not interviewed. She did not graduate from college until July and, therefore, did not have her teaching certificate at the time of her application when teachers for the 1973-74 school year were being selected (Tr. 180).

Lonnie Lockett applied for a position as industrial arts teacher at the secondary school level on April 5, 1973 (Plf's Ex. 25). He was interviewed by the department chairman, who stated on the interview form that Lockett was not qualified to teach industrial arts because he had no experience teaching electricity or power mechanics. The interviewer also commented that Lockett was nervous and "somewhat difficult to understand." Plaintiff introduced evidence showing that five industrial arts teachers were

hired by Hazelwood for the 1973-74 school year subsequent to Lockett's application. A review of their records discloses that three of these teachers did have the desired background in electronics (Plf's Ex. 2, Vol. VII, p. 395; Vol. IX, pp. 317-19; and Vol. I, p. 155), and that a fourth, although he had no electronics experience, was highly recommended based upon his performance as a student teacher at Hazelwood West Junior High School (Plf's Ex. 2, Vol. VI, p. 444). Mr. Lockett is currently employed in the engineering department of Airtherm Manufacturing Company in St. Louis (Tr. 183).

Sandra Reid filed an application with the Hazelwood district on March 7, 1973. In June she was informed that Brown Elementary School was looking for someone with a background in her field, science (Tr. 187), and she was interviewed for the job. The principal of Brown recommended her for a teaching position but chose someone else to fill the Brown slot (Plf's Ex. 33). The teacher chosen for the Brown position had served as a student teacher and substitute teacher at Hazelwood (Plf's Ex. 2, Vol. VIII, pp. 399-400). On August 16, 1973, the principal of Brown called Mrs. Reid to offer her a second or fifth grade position, but she had already signed a contract with the Berkeley School District (Tr. 188, 192).

Jerome Trotter testified that he applied for an elementary or secondary physical education teaching position in Hazelwood during the summer of 1970 (Tr. 195). He was interviewed by a physical education department administrator and by the principal of Elm elementary school, but was not offered a position (Tr. 197-198). Plaintiff introduced into evidence the records of a number of physical education teachers hired by Hazelwood between January, 1971, and the fall of 1973, but not for 1970. The deposition of Hazelwood's personnel director, J.W. Hord, introduced into evidence by plaintiff (Tr. 15), discloses that the reason Trotter was not hired was because of a very adverse recom-

mendation from his previous employer (Hord Dep. 41). Trotter obtained a position with the St. Louis district that year and is now with the Normandy school district (Tr. 196).

Geneice Kincaid filed an application for physical education teacher in July of 1971 (Tr. 201). She received an interview with someone at the administration building who told her he thought there was a vacancy at one of the elementary schools. However, the official called the school principal and was told that the principal already had someone in mind for the position (Tr. 202). Miss Kincaid filed a second application on June 7, 1972, but was informed by mail on June 9th that there were no vacancies that year (Plf's Ex. 24). At the time she testified Miss Kincaid was employed with the St. Louis City Board of Education (Tr. 205).

Vina Jones filed an application on April 9, 1973, seeking a position as business teacher with the Hazelwood district (Plf's Ex. 23). She testified that she also applied in April of 1972 just before graduating from college (Tr. 207). Her application does not reflect whether she held a vocational certificate. Only two business teachers were hired for the 1973-74 school year. One had four years prior teaching experience and the other had secretarial business experience and had been rated as an outstanding student teacher with the Hazelwood district (Plf's Ex. 2, Vol. VII, pp. 203, 204; Vol. X, pp. 432, 435-436). Vina Jones is currently teaching in the St. Louis city school district (Tr. 208).

Willie Palmer applied to the Hazelwood district on May 3, 1972, for a position as reading specialist, administrator or science teacher (Plf's Ex. 31). He was not certified as a science teacher (Tr. 213) and did not have a Master's degree as required for an administrative position in Missouri (Tr. 214). He has been teaching reading at University City High School since 1970 (Tr. 213, 215). Mr. Palmer's last pay level listed on his application, $11,200.00 (Plf's Ex. 31), was apparently about $2,000.00 per year greater than the Hazelwood district could offer for the position he sought.

Charlene Catlin applied for a home economics position at Hazelwood on July 8, 1972 (Plf's Ex. 63). She was interviewed for vacancies at three schools, including Hazelwood West Junior High School, but was not offered a position (Tr. 219-220). Mrs. Catlin was highly rated by her interviewer, but notations on her application and interview forms indicate that she was not qualified because although she held a general home economics certificate, she did not have the vocational certificate which is required of all home economics teachers in the Hazelwood district (Plf's Ex. 63, Hord Dep. 32-33, Huss Dep. 24). She had been teaching in the St. Louis City district since the fall of 1972 (Tr. 218).

Turning to the Hazelwood personnel records containing the applications of thirty-two other teachers (who did not testify) for positions at Hazelwood for 1972-73 and 1973-74 which were offered by the plaintiff, the record discloses that two of the applicants, Barbara Houston (Kirby) and Carol Jackson, were among the teachers hired by Hazelwood in those years (Plf's Exs. 22 and 72; 66). Only two of the other applicants were actually interviewed for a position.

The records offered in evidence disclose that Gerald Trotter (who was subpoenaed, claimed his witness fees for being present in court, but did not testify) applied for a physical education, health or psychology position for grades 4 to 6 on March 30, 1972 (Plf's Ex. 44). He was interviewed for a position on May 19th and on June 15th was notified that the position had been filled. Trotter's application form shows three years' teaching experience at three different grade schools. His personal form does not contain any interview form. Plaintiff introduced evidence concerning eleven persons hired by the Hazelwood district as physical education instructors for 1972 and 1973. One of these was hired on May 12, 1972, prior to Trotter's interview (Plf's

Ex. 2, Vol. IX, p. 110) and three were hired in 1973 (Plf's Ex. 2, Vol. VI, p. 214; Vol. IX, p. 250; and Vol. X, p. 372). Of the physical education teachers hired during 1972, several had held high school coaching positions in addition to their regular teaching experience (Plf's Ex. 2, Vol. II. p. 252; Vol. VIII, p. 440; and Vol. X, p. 175). Others were rated "first choice of all applicants" on the basis of their interviews with the principal of the school for which they were chosen. (Plf's Ex. 2, Vol. I, p. 102; Vol. III, p. 337; Vol. VII, p. 431).

Timotheus Carson also appeared in court and claimed witness fees but did not testify. The record shows that he applied on April 6, 1972, for a secondary English, French and German teaching position with Hazelwood (Plf's Ex. 4). He was given an interview the following day with the department chairman, who noted that Carson was interested in a phase elective program. Based upon his application Carson appears to be well qualified, but he stated that he expected to receive "no less than" his current salary of $11,500.00.

The twenty-eight other applicants for 1972 and 1973, whose records were offered by plaintiff, were not interviewed. Ten of the twenty-eight were subpoenaed for trial and received witness fees but did not testify. Out of the twenty-eight there were thirteen elementary teachers with no area of specialization, three social studies teachers, four math and science teachers, three physical education teachers, one band teacher, one home economics teacher, one counselor, one special education teacher and one Spanish teacher. Nine of these had no Missouri certification at the time they applied (Plf's Exs. 13, 28, 29, 36, 37, 41, 42, 46 and 47), and another applicant lacked certification in her area of specialization (Plf's Ex. 10). Four others did not fill out an application with the Hazelwood district until the middle or latter part of August (Plf's Exs. 3, 32, 43 and 65), which was after all teachers for the coming school year had been hired.

Prior to the Brown I decision (Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873), handed down by the U.S. Supreme Court in 1954, Missouri, as well as other states, required that schools be segregated. In November of that year the Hazelwood Board of Education instructed the superintendent to admit any black children found residing in the district, but "in view" of the fact that they would be "so decidedly in the minority", to offer to pay their tuition to a district having a predominantly black enrollment. Plaintiff relying on Bradley v. School Board, 382 U.S. 103, 86 S.Ct. 224, 15 L.Ed.2d 187 (1965) and Rogers v. Paul, 382 U.S. 198, 86 S.Ct. 358, 15 L.Ed.2d 265 (1965), contends that these facts standing along demonstrate the operation of a dual school system in Hazelwood, and that the failure to hire any black faculty members prior to 1969 shows a lack of affirmative action to overcome previous discrimination.

Plaintiff's evidence falls far short of establishing that a dual school system ever existed in Hazelwood. The district was not formed until a few years prior to the Brown decision, and there were no black students enrolled in the Hazelwood system during the period of state-mandated segregation in Missouri, since it was not until the meeting of the Board of Education on November 20, 1954, that school officials were even informed that any black residents had moved into the district. The policy adopted by the Board at that meeting was not a policy of mandatory transfer and would in any case have had a de minimus effect, given the small size of the district at that time and the small number of black students who might have been involved.

Nor is there any evidence of racial assignment of either students or faculty during any of the years for which plaintiff introduced evidence. During the 1970-71 school year blacks were enrolled in 20 out of 22 of the schools in the district (Plf's Ex. 55), and the largest number of blacks in any one school in that year was an enrollment of 41 blacks out of a total of 862 students. As late as 1973, when 22

black teachers were hired, only one black teacher was assigned to the school with the highest number of black students (Plf's Ex. 55). The Fourteenth Amendment does not require maintenance of precise racial balance of faculty. United States v. Montgomery County Board of Education, 395 U.S. 225, 236, 89 S.Ct. 1670, 23 L.Ed.2d 263 (1969).

The 1970 census shows that there are 19,425 elementary and secondary teachers in St. Louis City and County, of which 2,997, or 15.4% are black (Plf's Ex. 75). Plaintiff seeks thereby to establish a prima facie case of racial discrimination by pointing to the comparatively small ratio of black teachers (approximately 2% in 1973) employed by the Hazelwood district, and requests the Court to impose a mandatory hiring quota based upon the average ratio of black teachers employed in all of the school districts of St. Louis City and county combined.

While plaintiff in this case argues in its brief that the black teacher ratio of St. Louis City and County combined should control, plaintiff's expert witness testified at the trial that the St. Louis City school district attempts to maintain a teacher ratio based upon the race of students or population within the City district itself, rather than the makeup of the entire St. Louis Metropolitan area. Consistent with the racial mix of this area's population there is a much higher ratio of black teachers in St. Louis City than in the County. The black population in the city is 254,268 out of a total population of 622,234 (Plf's Ex. 53 [1970], Tables 81, 125), or approximately 40%. Of the 19,425 teachers in St. Louis City and County, 5,238 are employed in the city district, and 2,182 of these, or about 40%, are black (Plf's Ex. 53 [1970], Tables 122, 127).

The 45,579 black persons living in St. Louis County are less than 5% of the total population of around one million (Plf's Ex. 53, Tables 81, 125). Black teachers in St. Louis

County, which includes the Hazelwood district, number 815 out of 14,187 total teachers (Plf's Ex. 53 [1970], Tables 122, 127), or approximately 5.73%. Thus, the figure of 15% black teachers, against which plaintiff seeks to compare the Hazelwood district's employment record, is distorted by the inclusion of data from the St. Louis City district, which contains a much higher ratio of black teachers and a much larger black population.

While a great disparity in the ratio of black to white faculty as compared to the ratio of black to white students within a particular school district may provide evidence of racial discrimination, Jackson v. Wheatley School District No. 28 of St. Francis County, Arkansas, 430 F.2d 1359, 1363 (CA8 1970); Armstead v. Starkville Municipal Separate School District, 325 F. Supp. 560, 569 (N.D.Miss.1971), aff'd 461 F.2d 276 (CA5 1972), this Court has found no authority to suggest that a school district may be guilty of violating Title VII for failing to maintain a ratio of black teachers based upon the racial makeup of all teachers in the geographic area from which that district might conceivably draw its employees.

The number of black teachers employed by the Hazelwood district is undeniably meager. Nonetheless, it has kept pace with the small but steadily increasing black enrollment in the district. For the 1970-71 school year the six black teachers hired by the Hazelwood district comprised less than one percent of its total faculty. However, the number of black students enrolled during that period was likewise only one percent of the total district attendance. In 1973 the ratio of black teachers increased to 2%, consistent with a black enrollment in that year of 576 out of 25,166 total students. These figures do not establish the existence of statistical discrimination within the Hazelwood district.

In determining the validity of Hazelwood's employment procedures, this Court is not without guidance. The unique problems which arise in the area of teacher employment have been thoroughly explored in previous decisions of this circuit. The case of Smith v. Board of Education of Morrilton Sch. Dis. No. 32, 365 F.2d 770 (CA 8 1966) involved the closing of a formerly all black high school and dismissal of its black teaching staff following forced integration of the defendant school district. None of the dismissed teachers was considered by district officials to be qualified to teach in the newly integrated high school. This decision was based upon numerous subjective factors in addition to the teachers' "paper qualifications" such as academic degrees and experience. In regard to the defendant's reliance on subjective employment factors, the Court in Smith stated at pages 781-782:

> "We recognize that teaching is an art and that excellence does not depend upon knowledge, experience, formal training and classroom conduct alone. Fitness for teaching rests upon a broad range of factors and encompasses numerous personality and character traits. * * * In addition, the particular needs of a school district may at times genuinely require that weight indeed be given to an applicant's ability to teach more than one subject, or, in addition to teaching, to supervise extracurricular activity. Nothing contained in this opinion is intended to be restrictive of a school board's freedom to make full inquiry and to give due consideration to an applicant's qualifications and the district's needs in filling vacancies so long as the board does not act unreasonably, arbitrarily, capriciously, or unlawfully. * * * However, in this day race per se is an impermissible criterion for judging either an applicant's qualifications or the district's needs."

The Court held in *Smith* that the dismissed teachers had been discriminated against because in addition to con-

sidering the valid factors referred to above the defendant placed major emphasis on purely racial factors such as the inability of black teachers to "understand many of the problems of white pupils" due to their different environment, and the "differing speech patterns" possessed by black teachers. 365 F.2d at page 781.

In the recent case of Moore v. Board of Ed. of Chidester Sch. Dist. No. 59, Ark., 448 F.2d 709 (CA 8 1971), the Eighth Circuit established general guidelines to be applied in determining the validity of a school district's employment procedures. At page 713 of that opinion the Court stated:

> "We concede that there is some ambiguity in the decisions of this Court as to whether the standards must be objective. * * * To reconcile these decisions, we now make clear that a board of education is obligated to use objective nondiscriminatory standards in the employment, assignment and dismissal of teachers. A board may also consider established and previously announced nondiscriminatory subjective factors in making such decisions."

Although *Smith* and *Moore* dealt only with the dismissal of black teachers, the broad principles announced in those decisions are clearly intended to be applicable to selection of incoming teachers as well. When considered in light of the above decisions, this Court does not find fault of any constitutional magnitude with respect to the employment procedures currently in use in Hazelwood.

The first step in Hazelwood's employment process is the review of each application by the personnel office to insure that the applicant has a health certificate and Missouri certification to teach. Teaching certification has previously been held to be a valid nondiscriminatory standard, Moore v. Board of Ed. of Chidester Sch. Dist. No. 59, Ark. supra; Jackson v. Wheatley Sch. Dist. No. 28 of St. Francis Co.,

Ark., 430 F.2d 1359 (CA 8 1970), and the requirement of a health certificate is a similarly objective standard.

As in other districts of similar size, most of Hazelwood's interviewing is left to the principal of each individual school. It appears that his recommendation is approved by the superintendent in virtually every case. Because of the fact that the district is so large, school officials should be encouraged to develop and publish standard guidelines for employment of teachers in order to minimize the possibility that an individual interviewer might abuse the broad discretion which he currently possesses. Nonetheless, although the only instruction now given to those responsible for conducting interviews is to obtain the "most competent" teacher or administrator, substantial uniformity is achieved throughout the district by the use of standard application and interview forms which set forth the factors which are taken into account in making the hiring decision. Many of these factors, such as prior experience, prior student teaching or substitute teaching at Hazelwood, knowledge of subject area and knowledge of teaching skills, are clearly objective. Others, such as knowledge of children, appear on their face to be subjective, but are based upon objective information supplied by the applicant, such as participation in youth groups. None of the standards used could be said to involve racial distinctions, as was the case in Smith v. Board of Education of Morrilton Sch. Dist. No. 32, supra. Subjective factors such as personal appearance, confidence, disposition, philosophy of education and handling of particular discipline problems are all common, established considerations in the employment of teachers, and therefore do not violate the test set forth in Moore v. Board of Ed. of Chidester Sch. Dist. No. 59, Ark., supra.

The only substantial difference between the hiring procedures used at Hazelwood and those suggested by plaintiff's expert, Mr. Young, is that the St. Louis City district superintendent may specifically request that a

black or white teacher be selected for a particular position in order to maintain the desired racial balance.

The Court now turns to the evidence concerning black applicants who were not offered teaching positions with the Hazelwood district. The burden of proving that defendants' failure to hire these applicants constituted a pattern of intentional employment discrimination is on the government. United States v. Jacksonville Terminal Company, 451 F.2d 418, 442-443 (CA 5 1971), cert. den. 406 U.S. 906, 92 S.Ct. 1607, 31 L.Ed.2d 815 (1972). The Court has not found any basis in the record before it for concluding that defendants acted in a discriminatory fashion in failing to hire these fifty-five black applicants during 1972 and 1973.

Several of the twenty-five applicants who testified at the trial that they were not interviewed, including Judith Ealy, Pearlie Boyd, Willie Palmer and Charlene Catlin, did not meet Hazelwood's standard requirements for positions for which they applied. At least two, Nikki Lenoir and Cullen Cook, although they may have been qualified did not apply until a week or two prior to the date on which school was to commence. Both Lenoir and Cook frankly admitted that they were not surprised to learn that there were no vacancies remaining at that time. Several other witnesses testified that they were actually called by Hazelwood with regard to employment, but had already accepted positions with other districts.

A number of witnesses who applied as teachers in areas for which there were no vacancies stated that they were aware of the great competition for teaching positions. This competition is particularly intense in certain areas of teaching. For example, Derek Novel testified that his field, social studies, "is one of the more competitive fields in teaching today."

Atry Cotton applied for a position as special education teacher at Hazelwood. Although plaintiff claims that

Hazelwood's failure to hire him was discriminatory, plaintiff stipulated that the Hazelwood district does not even have a special education department, since St. Louis County has centralized such services at a separate location.

With regard to those black teachers who testified that they were interviewed but not offered a position, a review of the qualifications of those teachers ultimately selected for each position shows that in every case where a comparison is possible the district's choice is readily explainable on valid, nondiscriminatory grounds.

The teachers chosen to fill the vacancies for which Beverly Ellis and Sandra Reid interviewed had served as student or substitute teachers with the Hazelwood district, a qualification which frequently results in one candidate being chosen over the large number of other applicants for a particular position. Furthermore, Mrs. Reid was offered a job prior to the commencement of the 1973-74 school year but had previously accepted employment with another district.

Patricia Fletcher testified to an impressive scholastic record. However, the academic credentials of the applicant chosen for the position for which Fletcher was interviewed were equally impressive. She was a former graduate of Hazelwood High School, and the district had tried previously to hire her.

Charlene Catlin appears to have been an excellent teacher candidate, but she did not have a vocational home economics certificate, a prerequisite for all home economics teachers at Hazelwood.

Lonnie Lockett was told that the district wanted industrial arts teachers who had experience with electricity or power mechanics. The evidence shows that this standard was not applied in a discriminatory fashion, since most of the industrial arts teachers hired in the year Lockett was interviewed had the desired experience in electronics. Of the

other two industrial arts teachers hired, one, although lacking an electronics background, was recommended based on an outstanding student-teaching performance at Hazelwood.

Alberta Riggs was not recommended for a teaching position partially because of her criticism of Hazelwood's policies. In addition, a review of her transcript showed that she was not qualified for the reading position for which she was interviewed, although the black teacher who accompanied Mrs. Riggs to her interview was qualified and was subsequently hired by the district.

The Court has thoroughly reviewed the records of the remaining twenty-eight applicants who did not testify, and has found no evidence of discriminatory treatment of these applicants either. It appears that the problem actually underlying most of the black teachers who have applied to Hazelwood during the past two years is the same one which plagues every applicant in the teaching profession today—an overabundance of qualified teachers. During recent years the Hazelwood school district has had to turn away applicants at the rate of two to three thousand per year. These fifty-five black teachers who applied in 1972 and 1973 in reality are but a very small portion of the total number who applied unsuccessfully for positions in those years.

Since plaintiff has failed to prove the existence of any pattern or practice of racial discrimination in the employment of teachers at the Hazelwood school district, imposition of an affirmative recruitment program is not appropriate. Furthermore, as pointed out above, the numerical hiring quotas which plaintiff seeks to impose are contrived from census data encompassing the entire St. Louis Metropolitan area and bear no relation whatsoever to the racial characteristics of the Hazelwood district.

This memorandum opinion is adopted by the Court as its findings of fact and conclusions of law, and the clerk is

directed to prepare and enter the proper order of judgment in favor of the defendants.

JUDGMENT

In accordance with the Memorandum and Order of the Court this day filed which is incorporated in and made a part of this judgment;

It is hereby ordered and adjudged that judgment be and is hereby entered in favor of defendants and against plaintiff.

APPENDIX B

UNITED STATES of America,
Appellant,

v.

HAZELWOOD SCHOOL DISTRICT, et al.,
Appellees.

No. 75-1422.

United States Court of Appeals,
Eighth Circuit.

Submitted Jan. 12, 1976.

Decided April 20, 1976.

Rehearing and Rehearing En Banc
Denied May 25, 1976.

Before GIBSON, Chief Judge, CLARK, Associate Justice, Retired,* and BRIGHT, Circuit Judge.

Mr. Justice CLARK.

The Attorney General brought this suit on August 9, 1973, in the name of the United States, under Title VII of the Civil Rights Act of 1964[1] and the Fourteenth Amendment to the Constitution, alleging racial discrimination in the employment practices of the Hazelwood School District (Hazelwood) in St. Louis County, Missouri. The Superintendent and Board of Education of Hazelwood were also parties defendant. Jurisdiction was invoked under Section 707 of the Civil Rights Act of 1964, 42 U.S.C. §2000e-6, which authorizes the Attorney General to bring suit

* The Honorable Tom C. Clark, Associate Justice, Retired, Supreme Court of the United States, sitting by designation.

[1] 42 U.S.C. § 2000e *et seq.* (1970), *as amended*, 42 U.S.C. § 2000e *et seq.* (Supp. II, 1972).

whenever he has reasonable cause to believe that any person has engaged in a pattern or practice of resistance to the full enjoyment of the rights secured by Title VII of the Act.

In its complaint, the United States alleged that prior to 1955, Hazelwood employed no black faculty or staff in accordance with existing Missouri law which mandated racially segregated schools, and that since that time Hazelwood has continued to pursue such a pattern or practice of racial discrimination in employment by failing to employ black applicants who were as well or better qualified to teach than the white applicants who were actually employed. Injunctive relief was sought to require Hazelwood (1) to cease using discriminatory practices; (2) to take affirmative action to recruit black faculty and staff; and (3) to provide for back pay to those black applicants who were rejected because of such discriminatory patterns or practices. The district court held that the United States failed to prove that Hazelwood had engaged in discriminatory practices in violation of Title VII and the Fourteenth Amendment and denied any relief. *United States v. Hazelwood School District*, 392 F.Supp. 1276 (E.D.Mo.1975).

The United States claims that the court erred: (1) in failing to give any weight to Hazelwood's admitted pre-Title VII discrimination, (2) in applying an erroneous legal standard in determining that the United States had not demonstrated a statistical disparity between the racial composition of Hazelwood's work force and the relevant labor market; (3) in failing to recognize the relationship between the statistical evidence of discrimination and Hazelwood's standardless hiring practices; and (4) in holding that the United States had failed to prove that individual black applicants were rejected on account of race. The United States argues that it established, both by affirmative evidence and statistical summaries, a *prima facie* case of racial discrimination which shifted to Hazelwood the burden of

proving that it had not engaged in any unlawful discrimination.

We have concluded that, from its establishment in 1949-1951 until at least March 1974, Hazelwood has engaged in a pattern or practice of discriminatorily failing and refusing to hire blacks in violation of the Act, and that the United States and certain black teaching applicants are entitled to relief.

I. HAZELWOOD'S RECORD ON MINORITY HIRING

The Hazelwood School District occupies 78 square miles of territory and serves some 25,000 students, predominantly white, in some five communities in northern St. Louis County. The district borders for a short distance the St. Louis City School District. Prior to the United States Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), the Constitution of the State of Missouri mandated racially segregated schools. Mo.Const. Art. IX, § 1(a) (1945).

Before *Brown*, the school districts in St. Louis County assigned black faculty to black schools exclusively and white faculty only to white schools. Because no blacks lived in the Hazelwood District prior to 1954, the District did not operate a black school. Accordingly, Hazelwood employed no black faculty in its schools. Hazelwood's teacher application forms prior to 1954 contained a space for identification of race, as well as one for a photograph; indeed, as late as the 1962-63 school year, some of the forms continued to have a space for designation of race. As late as 1962 an advertisement appearing in the Clarion-Ledger Jackson Daily News of Jackson, Mississippi, solicited applications for "Kindergarten and Elementary teachers (white only)". Sometime prior to 1964, Hazelwood adopted a policy "to hire all teachers on the basis of training, preparation and recommendations, regardless of race,

color or creed." However, no black teacher was hired by Hazelwood until 1969.

In the past, Hazelwood has recruited teachers from predominantly white colleges and universities throughout Missouri, Illinois, Arkansas, Kansas and Oklahoma. No recruitment was done from either of the two predominantly black colleges in Missouri, Harris Teachers College and Lincoln University; nor did Hazelwood recruit from predominantly black colleges in any other state. There was also evidence presented at the trial concerning 55 black teachers who had applied at Hazelwood for positions but had been rejected. Twenty-five of these applicants testified in the case. The appellant sought to prove that in each instance, vacancies in the applicant's special field were filled by whites with less or no better qualifications.

Statistical information introduced by the United States demonstrated that Hazelwood employed only one black in 1969, and six blacks (0.6 percent of the total teachers in the district) in 1970-71. Thirteen blacks were employed out of a total of 1,197 teachers (1.1 percent) in 1972-73. During the 1973-74 school year, Hazelwood employed 22 black teachers out of a total of 1,231 (1.8 percent). In St. Louis City and County, however, over 15 percent of the teachers were black in 1970.

Hazelwood's hiring procedures may well be the crux of the problem. It uses virtually no standards in making its selections. Applicants complete an application form which is filed in the central personnel office. Each year all applicants are requested to update their forms, and those not updated are destroyed. An applicant must be interviewed to be hired. When a vacancy is anticipated or occurs, the principal of the school involved notifies the personnel office, and the director of the latter office then selects applicants in the relevant field from the application cards. Those selected are notified to arrange for interviews with the employing principal. When an application is filed, it is the

practice of the personnel officer merely to check the eligibility of the applicant under Missouri certification requirements.[2]

Upon receipt of a request from a principal to employ a new teacher, the director of the personnel office usually notifies those applicants who have recently come to the attention of the office or have kept the office advised of their continuing availability.[3] Groups of applicants generally

[2] Although Hazelwood requires that a teacher hold a valid certificate before he or she enters the classroom, frequently the District makes offers of employment to persons before they have obtained certificates. At the deposition taken on February 14, 1974, the United States questioned Clifford Kirby, Superintendent of Hazelwood's Schools from 1953 until the middle of 1967, about this practice:

> Q. For someone who is a new graduate and perhaps has not yet been certified by the school or by the School Board, would you hire them prior to their actually receiving the actual certificate?
>
> * * * * * *
>
> A. If you will look on the contract which is prescribed by the State of Missouri, it has all the various sections relative to the employment of teachers. One of the sections there is that before they can enter into a classroom they must have a valid certificate. When they sign that contract, that contract becomes invalid if they can't produce to the school a valid certificate on the opening day of school.
>
> Q. But they would be hired?
> A. Certainly we hired graduates before they would graduate, with the understanding that they would be graduating and would have a certificate to teach.

Evidence was admitted at trial which listed 101 Hazelwood teachers who were not certified at the time they applied but were subsequently hired. Fifty-three of these teachers had not received their certification at the time they were offered employment.

[3] Forty-five of the 55 black applicants for whom the Government is seeking relief were eliminated at this stage of the application process by never being interviewed. Mr. J.W. Hord, Director of Personnel for

(continued)

meet with Hazelwood's secondary or elementary coordinator, who describes the District to them, and the respec-

[3] (continued)
Hazelwood, was asked about the process of selecting applicants for interviewing:

> Q. You said twelve years ago you used to try to interview everyone that applied?
> A. No I didn't say that. I said we used to contact everyone to tell them there was a vacancy.
>
> Q. And now you attempt to contact who for a vacancy?
> A. The people that have notified us that they were available for a position and the ones that we are sure are available, these are the first ones we contact.
>
> Q. Okay. How do you mean persons have notified you to say they are available?
> A. Because we have people who are constantly calling the office advising us of their availability.
>
> Q. So you would select for or arrange interviews with the persons that have called the office and asked, been continually asking for interviews? They would be first?
> A. This is part of it.
>
> Q. Alright, who else would be included among those contacts?
> A. Those people who were rather recent applicants.
>
> Q. Anyone else?
> A. And if we have enough openings, we would attempt to contact a greater number of the people depending on the teaching area.
>
> Q. Okay. How many people do you like on interview for each particular vacancy?
> A. It depends on the coordinator and the principal. Both may decide we only want six or seven, or three or four; or ten.
>
> Q. So, if I understand you correctly, to select or interview you would check to see if the person was certified or appeared that he would be certified and then you select from those persons the persons who have notified the Hazelwood district that they are available for employment and by notification I mean other than submitting the application?
> A. Right.

tive school principal then interviews individually the applicants referred from the personnel office. The principal thereafter suggests a choice to the coordinator, who, in turn, makes a recommendation to the Superintendent. As a general rule, the choice of the principal is determinative. The principals are given no guidance as to how to select teachers beyond the general instruction to hire the "most competent" person available. Since there are 23 principals in Hazelwood, there are 23 different hiring standards within the general instruction of the Board to hire the "most competent" applicant. The Superintendent of Hazelwood testified that no standards had been developed; that the philosophy is that "the principal should have the leeway to employ the most competent people that he knows of or that he can find for the position"; that with regard to the efficacy of such a selection method "we have not conducted any studies along this line." The former Superintendent testified that Hazelwood "had no objective measurements other than your subjective opinions of the person hooked onto the recommendations and their file from the placement office." The Coordinator of Secondary Education for Hazelwood testified that he had been given no standards other than to hire "the best candidate for the position." The only minimum uniform standard applied in Hazelwood's hiring process is that a candidate must possess a health certificate and a Missouri Teachers Certificate prior to the first day of classes.

To rebut the Government's case, Hazelwood relied almost entirely upon its cross-examination of the Government's witnesses. Hazelwood introduced only one witness and several exhibits of its own. The witness testified to the total number of teachers who applied and were hired during the 1971-72 and 1973-74 school years — 3,127 of which 234 were hired in 1971-72 and 2,373 of which 282 were hired in 1972-73. The exhibits consisted of the policy manual, policy book, staff handbook, and historical summary of the formation of the Hazelwood School District.

Hazelwood argued that no discrimination could be proved because equal employment opportunity was the official policy of the District and because the small number of its black teachers was comparable to the small number of black students enrolled in Hazelwood's schools.

II. PRIMA FACIE SHOWING OF DISCRIMINATION

The district court held that the United States failed to prove that the defendants had engaged in discriminatory hiring practices in violation of Title VII and the Fourteenth Amendment. We disagree. Evidence was adduced at trial demonstrating (1) a history of discriminatory practices in the hiring of teachers by Hazelwood prior to the effective date of Title VII,[4] (2) a statistical disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the labor market,[5] (3) an unstructured decentralized hiring process in which subjective criteria predominate in evaluating candidates, and (4) specific discrimination against 16 black applicants for teaching positions at Hazelwood. After considering this evidence, we conclude that a *prima facie* case of discrimination was made out by the Government.

[4] Title VII of the Civil Rights Act of 1964 took effect on July 2, 1965. It was amended to apply to public employers such as the Hazelwood School District effective March 24, 1972, Equal Employment Opportunity Act of 1972, Pub.L. No. 92-261, § 2, 86 Stat. 103, *amending* 42 U.S.C. § 2000e(f) (1970).

[5] Some caution is necessary when using statistical evidence to analyze such disparities in employment figures for professional and academic positions. The raw data often will obscure the actual number of persons in the general workforce, white and black, who possess the special qualifications needed for particular openings. Here the problem has been minimized by the use of data from surrounding school districts (where the average number of black teachers is as high as 15%), the size of the disparity (2% as compared to 15%), and the presence of other indicia of discrimination.

Proof of racial discrimination in the hiring of teachers prior to the effective date of Title VII included evidence that prior to 1954, Hazelwood employed no black teachers in its all-white schools in accordance with the custom in the county; that from the time that Hazelwood's schools were integrated in 1969, it employed no black teachers; that Hazelwood placed newspaper advertisements for "white only" teachers in 1962; and that Hazelwood officials have never recruited from any predominantly black college,[6] although they did recruit from predominantly white universities in Missouri and elsewhere. The district court gave little, if any, weight to this evidence, even though it is highly relevant to show that present policies or practices, which appear neutral on their face, perpetuate past discriminatory practices. *United States v. T.I.M.E.—D.C., Inc.*, 517 F.2d 299 (5th Cir. 1975); *United States v. Jacksonville Terminal Co.*, 451 F.2d 418 (5th Cir. 1971); *United States v. Sheet Metal Workers, Local 36*, 416 F.2d 123 (8th Cir. 1969).

"In the problem of racial discrimination, statistics often tell much, and Courts listen." *Alabama v. United States*, 304 F.2d 583, 586 (5th Cir.), *aff'd per curiam*, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112 (1962). Courts frequently have inferred from statistical evidence the existence of a pattern or practice of discrimination. There is virtual unanimity on the proposition that the showing of a statistical disparity between the proportion of blacks in the employer's workforce and the proportion of blacks in the relevant labor market makes out a *prima facie* case of discrimination in violation of Title VII. *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40, 53 (5th Cir. 1974); *United States v. Wood Lathers, Local 46*, 471 F.2d 408, 414 n.11 (2d Cir.),

[6] In 1963 or 1964, J.W. Hord, personnel director for the Hazelwood schools, made one visit to Lincoln University, a predominantly black university in Missouri. He spoke with the placement director there but did not interview any teaching candidates.

cert. denied, 412 U.S. 939, 93 S.Ct. 2773, 37 L.Ed.2d 398 (1973); *United States v. Chesapeake and Ohio Ry. Co.*, 471 F.2d 582, 586 (4th Cir. 1972), *cert. denied*, 411 U.S. 939, 93 S.Ct. 893, 36 L.Ed.2d 401 (1973); *Rowe v. General Motors Corp.*, 457 F.2d 348, 357 (5th Cir. 1972); *United States v. St. Louis-San Francisco Ry. Co.*, 464 F.2d 301, 307 (8th Cir. 1972); *Carter v. Gallagher*, 452 F.2d 315 (8th Cir. 1971), *modified on rehearing, en banc*, 452 F.2d 327, *cert. denied*, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338 (1972).

In the present case, the district court found that the United States had failed to establish a *prima facie* case of discrimination on the basis of statistical evidence. However, the record shows that it offered evidence showing that no black teachers were on the Hazelwood faculty until 1969, and that during the 1970-71 school year, it employed only six black teachers out of a staff of 957 (0.6 percent); and by the end of the 1972-73 school year, although Hazelwood's teaching staff numbered 1,107, only 16 (1.1 percent) were black. During the 1973-74 school year, 22 (1.8 percent) of Hazelwood's teaching staff of 1,231 were black. In contrast, over 15 percent of the teachers in the relevant geographical area — St. Louis City and County[7] — were black in 1970. The district court concluded that this evidence did not constitute a *prima facie* showing of employment discrimination since less than two percent of the students in the Hazelwood schools are black.

[7] We accept the Government's contention that St. Louis City and County is the relevant labor market area for our consideration. The relevant labor market area is that area from which the employer draws its employees. *United States v. Ironworkers Local 86*, 443 F.2d 544, 551 n. 19 (9th Cir. 1971). Of the 176 teachers hired by Hazelwood between October, 1972, and September, 1973, approximately 80 percent resided in St. Louis City and County at the time of their initial employment. Approximately one-third of the teachers hired during this period resided in the City of St. Louis and 40 percent resided in areas of St. Louis County other than the Hazelwood District.

It stated:

> The number of black teachers employed by the Hazelwood district is undeniably meager. Nonetheless, it has kept pace with the small but steadily increasing black enrollment in the district. For the 1970-71 school year the six black teachers hired by the Hazelwood district comprised less than one percent of its total faculty. However, the number of black students enrolled during that period was likewise only one percent of the total district attendance. In 1973 the ratio of black teachers increased to 2%, consistent with a black enrollment in that year of 576 out of 25,166 total students. These figures do not establish the existence of statistical discrimination within the Hazelwood district.

392 F.Supp. at 1287-1288.

The district court erred in comparing the percentage of black teachers in Hazelwood with the percentage of black students in its schools rather than with the percentage of black teachers in the relevant labor market area. The law is well-settled that the relevant consideration in an employment discrimination case is the statistical disparity between the proportion of blacks in the employer's workforce and the proportion of blacks in the labor market. *See, e.g., United States v. Hayes International Corp.*, 456 F.2d 112 (5th Cir. 1972); *Carter, supra*, 452 F.2d 315; *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970). The level of black student enrollment in Hazelwood school sheds no light whatsoever upon the dispute before us, and the district court clearly erred in absolving Hazelwood of unlawful employment practices on the basis of the paucity of black students in the Hazelwood schools.

The demonstrated statistical disparity between the racial composition of Hazelwood's workforce and the relevant labor market is particularly revealing when considered in

light of Hazelwood's subjectively-based selection procedures. In Hazelwood, the district court found, each principal is vested with almost total discretion in hiring teachers for his school. All of the elementary and secondary school principals in Hazelwood are white. The only guidance that these principals receive from their superiors is the instruction to select the "most competent" person available. Principals are free to give whatever weight they desire to subjective factors in making their hiring decisions. Indeed, one principal testified that interviewing an applicant was "like dating a girl, some of them impress you, some of them don't." As noted by the district court, the principals all use identical interview forms which contain spaces for evaluation of an applicant's personal attributes, including personal appearance, knowledge of subject area, confidence, personality, and the like. Yet we find no evidence to support the court's finding that through the use of these forms "substantial uniformity" in hiring decisions "is achieved throughout the district." 392 F.Supp. at 1289. In fact, no evidence was presented which would indicate that any two principals apply the same criteria — objective or subjective — to evaluate applicants. In our view, it is more than mere coincidence that the use of such procedures produced only a few black teachers.

These hiring procedures are similar in many respects to the promotion procedures considered in *Rowe v. General Motors, supra*, 457 F.2d 348. In *Rowe*, a unanimous court of appeals condemned a promotional system in which:

> (i) The foreman's recommendation is the indispensable single most important factor in the promotion process.
>
> (ii) Foremen are given no written instructions pertaining to the qualifications necessary for promotion. * * *

> (iii) Those standards which were determined to be controlling are vague and subjective. * * *

457 F.2d at 358-359.

This promotional system, the court of appeals noted, was highly susceptible to the abuses of racial discrimination:

> * * * [P]romotion/transfer procedures which depend almost entirely upon the subjective evaluation and favorable recommendation of the immediate foreman are a ready mechanism for discrimination against Blacks much of which can be covertly concealed and, for that matter, not really known to management. We and others have expressed a skepticism that Black persons dependent directly on decisive recommendations from Whites can expect non-discriminatory action.

Rowe v. General Motors Corp., supra, 457 F.2d at 359 (citations omitted). The hiring procedures used by Hazelwood are similarly susceptible to discrimination. Vague and subjective criteria may disguise discriminatory practices, whether or not that was the original intent. If hiring criteria "operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability," then the absence of discriminatory intent will not serve to redeem them. *Griggs v. Duke Power Co.*, 401 U.S. 424, 432, 91 S.Ct. 849, 854, 28 L.Ed.2d 158, 165 (1972). Because Hazelwood's hiring procedures have spawned a disproportionately white faculty, we view them with skepticism.

The law does not preclude Hazelwood from considering previously announced, non-discriminatory, subjective criteria in deciding whom it will hire, *Moore v. Bd. of Educ. of Chidester*, 448 F.2d 709, 713 (8th Cir. 1971), as long as such factors are shown to be related to job performance. *Griggs, supra*, 401 U.S. at 431, 91 S.Ct. at 853, 28 L.Ed.2d at 164. However the law in this Circuit is clear that employment decisions based on subjective standards carry lit-

tle weight in rebutting charges of discrimination. *Green v. McDonnell Douglas Corp.*, 463 F.2d 337, 352 (8th Cir. 1972), *modified*, 411 U.S. 792, 803, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668, 678 (1973); *Moore, supra*, 448 F.2d at 713. The Fourth Circuit is in agreement:

> Elusive, purely subjective standards must give way to objectivity if statistical indicia of discrimination are to be refuted. * * *
>
> [I]n the absence of objective criteria applied to all workers alike, the statistics indicate that race is the only identifiable factor explaining the disparity between the jobs held by white employees and those held by black employees. The proof discloses no objective standards based on education, experience, ability, length of service, reliability, or aptitude to account for the preferential employment of white workers. * * *
>
> [I]n sum, the lack of objective guidelines for hiring and promotion and the failure to post notices of job vacancies are badges of discrimination that serve to corroborate, not to rebut, the racial bias pictured by the statistical pattern of the company's work force.

Brown v. Gaston County Dyeing Machine Co., 457 F.2d 1377, 1382-1383 (4th Cir.), *cert. denied*, 409 U.S. 982, 93 S.Ct. 319, 34 L.Ed.2d 246 (1972) (citations omitted).

We hold that statistical evidence demonstrating a disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the relevant labor market, when considered in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria, indicate a *prima facie* case of a pattern or practice of employment discrimination in violation of Title VII. Buttressing this aspect of the Government's proof is evidence of actual discriminatory practices in the hiring of teachers during the period prior to the effective date of Title VII and in the rejection of some 16 black applicants discussed

below. The Government's proof thus established a *prima facie* case. Hazelwood offered no evidence adequate to rebut the inference of discrimination created by the aforementioned evidence. We therefore reverse the judgment of the district court.

III. DISCRIMINATION AGAINST SPECIFIC INDIVIDUALS

The United States argues that 55 qualified black applicants for teaching positions in the Hazelwood schools were refused employment on the basis of race. Twenty-five of these applicants testified at trial. The Government offered documentary evidence from Hazelwood's personnel files to show that subsequent to the application of each of the 55 blacks, vacancies in the applicant's field were filled by whites with less or no better objective qualifications than those of the black applicants. The district court ruled, however, that there was no basis in the record for concluding that Hazelwood acted in a discriminatory fashion in failing to hire the 55 applicants.

The United States contends that the district court erred in so holding and requests back pay and other appropriate injunctive relief for those applicants who were refused employment on the basis of race. We believe that for an applicant to be entitled to specific relief, the United States had the burden at trial of establishing a *prima facie* case of racial discrimination against him or her. In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), the Supreme Court held that a private, non-class-action

> * * * complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which

the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

Id. at 802, 93 S.Ct. at 1824, 36 L.Ed.2d at 677.

This four-pronged test, we think should be applied to the 55 applicants before us even though this is not a private action, but rather one brought by the Attorney General. *See, E.E.O.C. v. Detroit Edison Co.*, 515 F.2d 301, 316 (6th Cir. 1975). Subsection (iv) is satisfied here by a showing that within a reasonable time after application, vacancies in the applicant's field were filled by whites with less or no better qualifications than those of the black applicant. The only applicants entitled to specific relief are those for whom the Government has established a *prima facie* case by satisfying the test, and whose *prima facie* case was not rebutted by defendants.

The district court made specific findings regarding 41 of the 55 rejected black applicants. We shall examine these findings with regard to each applicant, applying the standard articulated in *Green, supra*, 416 U.S. at 802, 93 S.Ct. at 1824, 36 L.Ed.2d at 677. Of course, the findings of fact made by the district court are entitled to full credit before this court, except for those that the record reveals to be clearly erroneous. Fed.R.Civ.P. 52; *Barryhill v. United States*, 300 F.2d 690, 693-694 (8th Cir. 1962). Ordinarily, where we reverse a district court's interpretation of the law applicable to a set of facts, it is appropriate simply to remand the injured parties to the district court for further relief. In this instance, however, we believe that a review of the specific findings on 41 of the applicants serves both the interests of justice and judicial economy by hastening relief for those discriminated against, and by preventing further litigation of the claims for which no *prima facie* case has been made.

We hold that the following applicants established a *prima facie* case of discrimination which was not rebutted by Hazelwood and that they are entitled to specific relief:

1. Derek Novel applied for a position as a junior or senior high social studies teacher on January 31, 1973. Novel had an outstanding academic record, had experience as a student teacher, and had travelled widely. Hazelwood informed Novel on several occasions that there were no vacancies in his field and never interviewed him. Evidence produced by the Government, however, showed that 10 persons applying after Novel for the same position were subsequently hired. At least five of these persons had teaching experience comparable to, or lesser than that of Novel. All five had weaker academic records. One had even been dismissed from his university on the basis of his grades. Hazelwood offered no evidence to explain why Novel was never considered for any of the positions filled after his application, or why Novel was told that there were no vacancies, when, in fact, there were. The district court's finding that Hazelwood did not act in a discriminatory manner in failing to hire Novel is clearly erroneous.

2. Robert Howell applied in March of 1973 for a position teaching in the same area as had Novel, secondary social studies. Howell graduated from the University of Missouri and was awarded a scholarship on the basis of his grades. At the time of his application, he had a life certificate in Missouri with two years of experience teaching in his field. Moreover, Howell had served as a student teacher at Hazelwood Senior High, and his cooperating teacher had been impressed with his abilities. Hazelwood offered no evidence to explain why Howell was never interviewed for any of the 10 vacancies in social studies filled by whites subsequent to his application. Only one of these whites had more experience than Howell. Neither did Hazelwood attempt to explain why, as a former student teacher at Hazelwood, Howell was not given preference over other ap-

plicants, in light of their practice of doing so. We hold the district court's finding that the failure to hire Howell was non-discriminatory to be clearly erroneous.

3. James Washington also applied for a position as a social studies teacher at the beginning of 1973. Washington graduated from college in 1972 and held a life certificate in Missouri at the time of his application. He had experience as both a student and a substitute teacher. Sometime after he applied, Washington was told by Hazelwood that there were no vacancies in his field, although ten vacancies in this area were filled by whites subsequent to his application. Five of these whites had experience comparable to, or less than, that of Washington. Hazelwood offered no evidence to rebut the inference of discrimination resulting from the Government's evidence. The district court's finding that Washington had suffered no discrimination at the hands of Hazelwood is clearly erroneous.

4. Samuel Downs applied for a position as an industrial arts teacher on May 24, 1972. At that time Downs held a life certificate in Missouri and a bachelor of sciences degree in industrial arts. He had one year of experience teaching industrial art in St. Louis. Downs never had a formal interview but was told by Hazelwood's personnel director that there would probably be no vacancies in his field. Two such vacancies were filled after his application for the 1972-73 school year. One of the teachers hired had the same amount of experience as Downs, and the other had less. The latter, unlike Downs, did not even possess a state life certificate at the time of his application. Hazelwood submitted no evidence to explain why Downs was not considered for either of these positions. We hold the district court's finding that the failure to hire Downs was non-discriminatory to be clearly erroneous.

5. Alice Moore Roach applied for a position as an elementary teacher April 30, 1972. Roach had an excellent academic record with experience as a student teacher.

However, she was never interviewed. The district court erred in finding that Roach was not hired because she lacked teaching certification at the time she applied. Forty-six elementary school teachers with similar experience were hired subsequent to Roach's application. Eight of these 46 teachers also had not applied for certification at the time they applied for teaching positions. Hazelwood offered no evidence to explain why a different standard was applied to these eight white applicants than was applied to Roach. The district court's finding that Hazelwood did not discriminate against Roach on the basis of race is held to be clearly erroneous.

6. Cynthia Edmond applied for a position as a teacher of social studies on July 11, 1972. Subsequently she was told there were no vacancies in her field. The following year she renewed her application. Edmond testified that in college she had a 3.9 grade point average on a 4.0 scale in her major. She possessed a life certificate at the time of her application and had experience student teaching a twelfth grade government class. Edmond was never interviewed by Hazelwood. The district court apparently overlooked evidence that, after Edmond was told no vacancies existed, five whites were hired as social studies teachers for the 1972-73 school year. Three of the five whites had teaching experience no greater than that of Edmond. Nine vacancies in the field of social studies were filled for the 1973-74 year after Edmond had renewed her application. Four of the teachers hired to fill these vacancies had no more teaching experience than Edmond. Hazelwood offered no evidence to explain why in 1972 Edmond was told there were no vacancies when, in fact, there were, or why she was not hired for any of the openings for the 1972-73 or 1973-74 terms. The finding of the district court that Edmond was rejected for non-discriminatory reasons is clearly erroneous.

7. Beverly Ellis applied for an elementary teaching position on August 4, 1972. Ellis had a life certificate and seven years of teaching experience at several different schools. She was interviewed at Brown and Charbonier elementary schools, but was not offered a position at either. Hazelwood offered no evidence to rebut her testimony in support of the Government's view that these interviews were insufficient reason for refusing employment. Moreover, the district court failed to discuss evidence showing that 51 other elementary teaching positions were filled subsequent to her application by persons of lesser experience, 33 of whom had only student teaching experience. Hazelwood offered no evidence to show why she was not hired for any of these 51 positions. We hold that Ellis established a *prima facie* case of discrimination which was not rebutted by Hazelwood.

8. Delores Penton applied for a kindergarten or elementary level position on June 21, 1973. Penton testified that she had a 3.29 grade point average on a 4.0 scale in college and had three years of experience teaching elementary school. Penton was never interviewed. The finding of the district court that she was not hired because she lacked certification was clearly erroneous. The United States offered evidence showing that five persons were hired by Hazelwood as elementary level teachers after Penton's application, all of whom lacked certification at the time of their applications. None of them had as much teaching experience as Penton. Hazelwood offered no evidence to rebut the inference of discrimination created by this evidence. We hold that Penton was denied employment on the basis of race.

9. Timotheus Carson applied for a position teaching secondary English, French, or German on April 6, 1972. Carson possessed a Master of Arts degree in English, French, and German and a life certificate. Moreover, he had 10 years of experience teaching languages. The day after he applied, Carson was interviewed by the department chair-

man, who rated him very highly. However, Hazelwood never offered him a position. The district court failed to note that subsequent to his application, 23 teachers in Carson's field were hired for the 1972-73 school year, all having less teaching experience than he. The great majority of these teachers had significantly less experience than Carson and only one had a master's degree. The finding of the district court that Carson was not rejected on racial grounds is clearly erroneous in light of the Government's evidence.

10. Georgia Shaw applied for a position as an elementary level teacher on April 27, 1973. Shaw had a degree in elementary education and had applied for her Missouri certification at the time of her application with Hazelwood. Moreover, Shaw was a student teacher at Black Jack Elementary School in the Hazelwood District. Her cooperating teacher stated on Shaw's evaluation form dated March 1, 1973:

> She [Shaw] has a good rapport with the children, but she is also able to use effective methods of discipline. She is a willing worker and will do anything that is suggested. She has also shown initiative in making individual projects, games, learning packets, and other aids, to help the individual child. I feel Georgia has the qualities and capabilities which when fully developed will make her a very effective teacher.

Hazelwood never interviewed Shaw. The district court clearly erred in finding that she was not hired because she lacked proper certification at the time of her application. Thirteen whites with no more than student teaching experience were hired by Hazelwood to teach elementary school during the 1973-74 school year. All 13 teachers were interviewed after Shaw's application. Seven of these teachers also lacked certification at the time of their applications. Hazelwood offered no evidence to explain why

Shaw was not hired for one of these positions, in light of her comparable qualifications and the laudatory recommendation of her cooperating teacher. We hold that the Government established a *prima facie* case of discrimination against Shaw, which was not rebutted by Hazelwood.

11. Alexis Smith applied for a position as an elementary school teacher on April 21, 1972. Smith had an undergraduate degree in elementary education and had experience as a student teacher. At the time of her application, Smith had applied for certification in Missouri. Hazelwood never interviewed her. The district court's finding that she was not hired because, at the time of her application, she lacked proper certification was clearly erroneous. Twenty-five white teachers with experience no greater than Smith's were hired as elementary teachers for the 1972-73 school year. Twelve of these teachers also lacked certification at the time of their applications. Hazelwood produced no evidence to explain why Smith was not hired for one of these positions. We hold that the Government established a *prima facie* case of discrimination against Smith which was not rebutted by Hazelwood.

12. Geraldine Thomas applied for a position as fourth, fifth, or sixth grade teacher in April of 1972. Thomas had an undergraduate degree in elementary education and had more than five years of experience teaching fifth grade. Hazelwood never interviewed her. The finding of the district court that Thomas was not hired because she lacked proper certification is clearly erroneous. Evidence adduced by the Government showed that at least six positions for the 1972-73 school year were filled by white teachers, who also lacked certification at the time of their applications. None of these teachers had experience comparable to that of Thomas. Hazelwood produced no evidence to explain why she was not hired to fill one of these

positions. A *prima facie* case of discrimination against Thomas was made out by the United States and was not rebutted by Hazelwood.

13. Mary Etta Wilson applied for a position teaching first, second, or third grade on April 5, 1972. In December of 1972, she wrote Hazelwood asking that her application be kept in the active file. Wilson had an undergraduate level degree in elementary education and more than five years of experience teaching grades one through three. Hazelwood never interviewed her. The district court clearly erred in finding that Hazelwood rejected her for lack of proper certification at the time of her application. The Government's evidence demonstrated that at least eight white teachers, who also lacked certification when they applied, were hired for the school years 1972-73 and 1973-74 to teach at the elementary level. All 8 teachers had less teaching experience than Thomas, and four of them had experience only as student teachers. Hazelwood offered no evidence to explain why Wilson was rejected in favor of less qualified whites. The Government, we hold, made out a *prima facie* case of discrimination against Wilson which was not rebutted by Hazelwood.

14. Robert Wilson applied for a position teaching junior or senior high school science on April 5, 1972. In December of 1972, he wrote Hazelwood asking that his application be kept in the active file. Wilson had an undergraduate degree in science and seven years experience teaching science courses on the senior high level. Hazelwood never interviewed him. The finding of the district court that Wilson was rejected because he lacked certification at the time of his application is clearly erroneous. Evidence adduced by the Government showed that, after Wilson's application, at least five junior or senior high level science teachers, who also lacked certification when they applied, were hired for the 1972-73 or 1973-74 school years. None of the five had as much teaching experience as Wilson; four had experience

only as student teachers. Hazelwood produced no evidence to explain why Wilson was not hired for one of these positions. We conclude that the United States established a *prima facie* case of discrimination against Wilson, and Hazelwood failed to rebut it.

15. Cozeene Triplett applied for a position as an elementary guidance counselor on August 21, 1972. Triplett had a master's degree in counselor education. His application forms indicate that he had certification in elementary administration and seven years of experience teaching fifth grade. Hazelwood never interviewed him. The finding of the district court that Triplett was rejected because he applied "after all teachers for the coming school year had been hired," 392 F.Supp. at 1286, was clearly erroneous. The defendants, the Government evidence showed, hired a white elementary counselor nine days after Triplett applied. This counselor applied after Triplett had, and was interviewed the same day she applied. She did have a master's degree in counselling, but had three fewer years of teaching experience than Triplett. No evidence was offered by Hazelwood to show why Triplett was rejected in favor of a comparably, if not less, qualified white. We hold that the United States made out a *prima facie* case of discrimination against Triplett which was not rebutted by Hazelwood.

16. Willie Palmer applied for a position as a reading specialist, an administrator, or a science teacher on May 3, 1972. Palmer had an excellent academic record and 15 years of experience teaching reading, science, and elementary school. Palmer possessed a life certificate for elementary education. The district court found that he was not certified as a science teacher, and that he lacked a master's degree as required for an administrative position in Missouri. The district court did not discuss evidence adduced by the Government showing that, after Palmer's application, the defendants hired 57 persons to teach elementary school or reading during the 1972-73 school year. None of these persons had as much teaching experience as Palmer. The district court considered significant the fact that Palmer's salary in a non-teaching job at the time of his application was higher than the salary the Hazelwood District could offer him. In light of the fact that Palmer *applied for* the lower-salaried teaching position, evidence concerning the level of his current salary was totally inadequate to rebut the inference of discrimination created by the Government's evidence. Dedicated teachers often choose to teach or remain in teaching positions without regard for the pecuniary compensation involved. The finding of the district court that Palmer was rejected on a non-discriminatory basis is clearly erroneous.

We agree with the district court that the Government's evidence did not substantiate a finding of discrimination against the remainder of the 55 black applicants, including the following individuals, for whom specific findings were made: Judith Ealy, Lonnie Lockett, Patricia Fletcher, Nikki Lenoir, Pearlie Boyd, Atry Cotton, Melvin Lowe, Westelle Florez, Cullen Cook, Naomi Cooksey, Jerome Trotter, Gerald Trotter, Geneice Kincaid, Vina Jones, Charlene Catlin, Jerry Fitch, Harriet Mullins, Naomi Easter, Ruby Lee Carroll, Jesuita Payne, Marva Hill, Elwood Moore, Rosa Lee Thompson, Alberta Riggs, and Sandra Reid.

IV. REMEDY AND BACKPAY

We have held that the Government established a pattern or practice of discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, *as amended*, 42 U.S.C. § 2000e *et seq.* (Supp. II, 1972), by showing that Hazelwood's subjectively-based hiring procedures have resulted in a statistical disparity between the proportion of black teachers employed by Hazelwood, and the proportion of black teachers in the labor market.

Furthermore, we have concluded that the United States proved unlawful discrimination against 16 rejected black applicants.[8] We believe that the United States and these 16 black applicants are entitled to relief.[9]

On remand the district court shall enter an order consistent with the following directions:

1) Hazelwood, its officers, agents, employees, and successors are to be enjoined permanently from engaging in any act or practice in the hiring of teachers which has the purpose or effect of discriminating against any individual because of his race or color.

2) Hazelwood shall promulgate accurate job descriptions and hiring criteria to ensure that all black and white applicants for teaching positions are evaluated on the same basis.

3) Hazelwood shall list clearly on its recruiting and application materials both the requirements for its teaching positions and the procedures by which its selections are made. The materials also shall include both *a*) an announcement that race or color operates as no bar to employment with Hazelwood, and *b*) a description of the proper subjective factors to be considered during the interview portions of the selection procedure, e.g., skill and

[8] Although 14 of the 16 were never interviewed, their race was apparently known to the school district from indications on their application, e.g., Georgia Shaw included a picture with her application, Cozeene Triplett listed all-black Lincoln University as his undergraduate school, and Elwood Moore marked the top of his application with the words "I am Black."

[9] Title VII empowers the court to:

> enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay * * *.

42 U.S.C. § 2000e-5(g).

clarity of expression, self-confidence and attitudes toward teaching.

4) Hazelwood shall ensure that equal notice concerning available openings be given to potential applicants, both black and white. In recruiting procedures, if any, Hazelwood shall include on an equal basis recruiting visits to predominantly black colleges and other institutions. Appropriate steps to ensure student teaching opportunities at Hazelwood for black college students shall also be taken.

5) The district shall make periodic reports to the Justice Department for the three school years subsequent to the entry of the district court's decree on its conduct in hiring qualified black teachers.[10] It shall maintain a record, available for Government inspection, explaining its reasons for selecting a white applicant over available black applicant(s) for each vacancy filled during the three-year period.

6) Hazelwood shall place the names of the 16 applicants discriminated against on a preferred hiring list, giving them the right to refuse first any vacancies to which their qualifications entitle them.

7) On remand, the district court shall award backpay to Timotheus Carson and Beverly Ellis, and it shall determine whether there are any reasons why backpay should not be awarded to the other 14 applicants.[11] The measure of such

[10] In the past, we have found such reporting to be a useful remedy for eliminating discrimination. *United States v. N.L. Industries, Inc.*, 479 F.2d 354, 378, 380-82 (8th Cir. 1973).

[11] The Supreme Court has recently emphasized that it was Congress's purpose in enacting Title VII "to make persons whole for injuries suffered on account of unlawful employment discrimination." *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418, 95 S.Ct. 2362, 2372, 45 L.Ed.2d 280, 297 (1975). After discussing the wide discretion of the courts in Title VII cases to "fashion the most complete relief possible," the Court ruled:

(continued)

an award is the difference between the earnings of an applicant had he been employed by Hazelwood and his actual earnings after the time his employment with Hazelwood should have begun, or amounts earnable with reasonable diligence since that time. *E.E.O.C. v. Detroit Edison Co., supra*, at 315.

It is so ordered.

Reversed and remanded.

GIBSON, Chief Judge (dissenting).

I respectfully dissent. The District Court in the instant case concluded that though "[t]he number of black teachers employed by the Hazelwood district is undeniably meager," there is no "basis in the record * * * for concluding that defendants acted in a discriminatory fashion in failing to hire these fifty-five black applicants during 1972 and 1973." 392 F.Supp. at 1287, 1289. During recent years Hazelwood has had to turn away teacher applicants at

" (continued)

> It follows that, given a finding of unlawful discrimination, backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination.
>
> * * * * * *
>
> It is necessary, therefore, that if a district court does decline to award backpay, it carefully articulate its reasons.

Id. at 421 and n. 14, 95 S.Ct. at 2373, 45 L.Ed.2d at 298.

Both Carson and Ellis had completed the entire application process by being interviewed for positions for the '72-'73 school year. The remaining fourteen were never interviewed and thus the record is unclear as to when they would have commenced employment had they not been discriminated against. We hesitate to decide the eligibility of these fourteen for backpay without such information, and accordingly remand the question to the district court.

the rate of two to three thousand per year. For example, only 282 out of 2,373 applicants for the 1972-73 school year were hired. However, the majority, on a cold appellate record, reverses the District Court's finding and concludes instead that:

> [S]tatistical evidence demonstrating a disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the relevant labor market, when considered in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria, indicate a *prima facie* case of a pattern or practice of employment discrimination in violation of Title VII.

Majority opinion, at 813 [14b].

Though the evidence of discrimination with respect to a handful of the 55 applicants presents a close case, in my view the District Court's finding is not clearly erroneous and should not be disturbed. As to the remainder of the applicants, the Government simply did not come close to proving that the district unlawfully discriminated on account of race.

Under the majority's rationale, every qualified black applicant must be hired in favor of similarly qualified whites, regardless of the tremendous oversupply of qualified applicants seeking employment. This cannot be the law. The matter of determining which of the many teacher applicants are qualified and desirable candidates according to the needs of the district is exclusively for the "broad and sensitive expertise of the School Board and its officials." *Kemp v. Beasley*, 389 F.2d 178, 189 (8th Cir. 1968); *accord*, *Smith v. Board of Education*, 365 F.2d 770, 782 (8th Cir. 1966). To justify federal interference in the hiring process under Title VII, actual discrimination should be proved, not presumed.

The majority here takes an unwarranted step in directing and monitoring the operation of a local school system, in effect undertaking the administrative and operational powers of the school board and officials. This can only lead to a further deterioration in the quality of public education, with a substantial increase in costs on the already overburdened taxpayer. In reality, the two applicants to whom the majority grants backpay are receiving an unearned windfall from school district funds. Of the thousands of applicants rejected by the district, the great majority of whom were likely qualified, these two (and perhaps the remaining 14 to be considered on remand) were fortuitous enough to be black and to complain about not being hired in favor of whites who were similarly or perhaps somewhat less qualified.

I feel particularly uncomfortable with the majority's undue reliance upon inconclusive statistical evidence and with the court's imposition of such a broad remedy. Though, as the majority notes, courts in Title VII litigation do "listen" to statistical evidence, such listening must be done "with a critical ear," *Logan v. General Fireproofing Co.*, 521 F.2d 881, 883 (4th Cir. 1971), closely scrutinizing the many complex variables of statistical empirical proof. *Pettway v. American Cast Iron Pipe Co.*, 494 F.2d 211, 231 n. 44 (5th Cir. 1974). I believe the majority has misinterpreted the significance of the District Court's reference to the ratio of black teachers to black students in the Hazelwood district, and has improperly adopted the St. Louis metropolitan area as the relevant labor market to inflate and distort the concentration of available black teachers for comparison.

Here, as always, determination of the relevant labor market from which the employer draws its employees was a question for the trier of fact, *see United States v. Ironworkers Local 86*, 443 F.2d 544, 550-51 (9th Cir.), *cert. denied*, 404 U.S. 984, 92 S.Ct. 447, 30 L.Ed.2d 367 (1971), not for this court to make on limited appellate review. The

District Court made no explicit selection of a relevant labor market for comparison with Hazelwood's workforce, but did specifically *reject* the Government's attempt to employ the St. Louis metropolitan area for that purpose. 392 F.Supp. at 1287. Given the fact that Hazelwood in fact recruits its teachers from a broad multistate area, majority opinion, at 808-809, I would hold that the relevant labor market can only be accurately defined as the same large multistate area. *Johnson v. Goodyear Tire & Rubber Co.*, 491 F.2d 1364, 1371 (5th Cir. 1974). Where justified by the record, federal courts have referred to statistics encompassing statewide or even regional areas. *See, e.g., Griggs v. Duke Power Co.*, 401 U.S. 424, 430 n. 6, 91 S.Ct. 849, 853, 28 L.Ed.2d 158, 163 (1971) (all of North Carolina); *United States v. Georgia Power Co.*, 474 F.2d 906, 918 (5th Cir. 1973) (the entire South). I would affirm the District Court's finding that no discrimination was proved.

The broad scope of the remedy adopted by the majority is even more distressing in my view. The relief imposed is a prime example of the heavy-handed manner in which the federal courts have interfered in the operation of local schools, to the detriment of the schools and taxpayers, resulting in a misdirection of tax funds voted by the people for educational purposes. The permanent injunction is unwarranted in this case, for it compels the federal courts to monitor operation of the Hazelwood district on an endless basis, thus subjecting the district to the imposition of serious sanctions and penalties possible under a contempt finding.

I take particular exception to the imposition of job selection criteria and hiring preferences and to the requirement that the district must provide, for federal inspection, a record "explaining its reasons for selecting a white applicant over available black applicant(s) for each vacancy filled during the three-year period." Majority opinion, at

819 [27b]. This is a long step in the direction of reverse discrimination operating only in favor of a specified minority. *See Defunis v. Odegaard*, 416 U.S. 312, 336, 94 S.Ct. 1704, 1716, 40 L.Ed.2d 164, 180 (1974) (Douglas, J., dissenting) ("There is no constitutional right for any race to be preferred."). The instant record fails to reveal any exceptional circumstances to justify such a remedy. *Cf. Carter v. Gallagher*, 452 F.2d 315, 331 (8th Cir.), *cert. denied*, 406 U.S. 950, 92 S.Ct. 2045, 32 L.Ed.2d 338 (1972). Preferential remedies of this sort should be resorted to only when no alternative means exist for eradicating discrimination.

In essence, the majority seeks to hire black teachers without regard to the relevant employment criteria — professional qualification, teaching talent, skills and experience — and in spite of the racial and ethnic makeup of the student, teacher and taxpayer composition of the school district and the larger relevant labor market. Under the majority rationale every qualified black must be hired irrespective of the relevant labor market and the qualifications of competing white teachers. Surely, neither the Constitution nor the statute, Title VII, mandates such an extensive interference in local school operations.

APPENDIX C
JUDGMENT

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

FILED
APR 20 1976
ROBERT C. TUCKER
CLERK

No. 75-1422

September Term, 1975

United States of America,

Appellant,

vs.

Hazelwood School District, C.O. McDonald, Superintendent, Robert Bischof, Robert Coleman, Dorothy Smith, Charles Sweeney, Donald Mattox and Milton Straus, Members of the Board of Education of the Hazelwood School District,

Appellees.

APPEAL FROM the United States District Court for the Eastern District of Missouri

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Missouri and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further ordered by this Court that this cause, be, and remanded to the said District Court for proceedings consistent with the majority opinion of this Court this day filed herein.

April 20, 1976

Order entered in accordance with the opinion:
/s/Robert C. Tucker
Clerk, U.S. Court of Appeals, 8th Circuit.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

FILED
MAY 25, 1976
ROBERT C. TUCKER
CLERK

75-1422 **September Term, 1975**

United States of America,
Appellant,

vs.

Hazelwood School District, et al.,
Appellees.

Appeal from the United States
District Court for the
Eastern District of Missouri

The Court having considered petition for rehearing en banc filed by counsel for appellees and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

May 25, 1976

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I. SELECTED DOCKET ENTRIES

A. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Civil Action No. 73 C 553(A)

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAZELWOOD SCHOOL DISTRICT; C. O. McDONALD. Superintendent; ROBERT BISCHOF, ROBERT COLEMAN, DOROTHY SMITH, CHARLES SWEENEY, DONALD MATTOX and MILTON STRAUSS, Members of the Board of Education of the Hazelwood School District,

Defendants.

DATE	PROCEEDINGS
1973	
Aug. 10	Complaint filed.
Sept. 4	Joint answer filed.
1974	
Mar. 25-27	Court Trial.
1975	
Apr. 11	Memorandum Opinion filed.
Apr. 11	Judgement filed.
June 9	Notice of Appeal filed.

B. Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Case No. 75-1422

DATE	PROCEEDINGS
1975	
June 12	Appeal docketed.
1976	
Jan. 12	Case argued and submitted.
Apr. 20	Opinions filed.
Apr. 20	Judgement filed.
May 13	Petition for rehearing filed.
May 25	Order denying petition for hearing filed.
June 10	Appellees' motion for stay of mandate pending certiorari proceedings granted.

II. COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[Title Omitted in Printing]

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States, seeking relief from violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e,

et seq., and the Fourteenth Amendment to the Constitution of the United States.

2. This Court has jurisdiction of this action under 28 U.S.C. 1345 and 42 U.S.C. 2000e-6(b).

3. Defendant Hazelwood School District (Hazelwood District) is an agency of the State of Missouri and under Missouri law provides public education to eligible children residing within its geographic boundaries. The Hazelwood District is located in St. Louis County, Missouri.

[2] 4. Defendant C. O. McDonald is superintendent of the Hazelwood District and, under the general supervision of the Hazelwood School Board, is responsibile for the operation of the Hazelwood District.

5. Defendants Robert Bischof, Robert Coleman, Dorothy Smith, Charles Sweeney, Donald Mattox and Milton Strauss are members of the Board of Education of the Hazelwood District and are responsible for its operation.

6. The defendant Hazelwood District is an employer within the meaning of 42 U.S.C. 2000e(b) and is engaged in an industry affecting commerce within the meaning of 42 U.S.C. 2000e(h) as amended on March 24, 1972.

7. Prior to 1955, pursuant to Missouri law, the Hazelwood District permitted no black students to attend its schools and employed no black faculty and staff members.

8. The defendant Hazelwood District, Superintendent and members of the Hazelwood Board of Education have pursued and continued to pursue a pattern and practice of discrimination against black applicants for employment in faculty and staff positions with the Hazelwood District. This pattern and practice of discrimination includes the following specific practices:

[3] a. Failing and refusing consistently to hire black applicants as well or better qualified than white applicants subsequently hired for available faculty and staff positions;

b. Failing and refusing to recruit blacks for employment in faculty and staff positions while whites are recruited for such available positions;

c. Failing and refusing to utilize objective, nondiscriminatory selection procedures for the employment of faculty and staff;

d. Failing and refusing to take affirmative action to overcome the effects of past racially discriminatory policies and practices.

9. The policies and practices described in paragraph 8 above have resulted and continue to result in the denial of equal employment opportunities to black applicants for faculty and staff positions because of their race, and those policies and practices constitute a pattern or practice of resistance to the full enjoyment by blacks of the right to equal employment opportunity guaranteed them by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.* and the Fourteenth Amendment to the Constitution of the United States. This pattern or practice is of such a nature and is intended to deny the full exercise of that right.

[4] 10. The United States has notified the defendants that its policies and practices as described in paragraph 8 above are in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

11. The defendants have failed and refused to take reasonable steps to eliminate the effects of their past racially discriminatory policies and practices which have

the effect of denying equal employment opportunities to blacks on account of their race.

WHEREFORE, plaintiff prays that all defendants, their officers, agents, employees, successors, and all persons in active concert or participation with them be preliminarily and permanently enjoined from engaging in any racially discriminatory employment policy or practice which operates to continue the effects of past racially discriminatory employment, and further that they be preliminarily and permanently enjoined from:

(1) Failing and refusing to employ and recruit qualified black applicants for faculty and staff positions on the same basis as whites;

(2) Failing and refusing to utilize objective, nondiscriminatory selection procedures for the employment of faculty and staff;

[5] (3) Failing and refusing to take reasonable steps to overcome the present and continuing effects of past racially discriminatory policies and practices, including at least the following steps:

(a) the hiring of qualified black faculty members, including both teachers and administrators, on an accelerated basis;

(b) the implementation of a recruiting program aimed at prospective black applicants;

(c) the granting of relief, including offers of employment and back pay, to qualified black persons whose applications were discriminatorily rejected.

Plaintiff further prays for such other and further relief as the cause of justice may require, together with its costs and disbursements in this action.

/s/ Elliott L. Richardson
ELLIOTT L. RICHARDSON
Attorney General

/s/ J. Stanley Pottinger
J. STANLEY POTTINGER
Assistant Attorney General

JAMES E. REEVES
United States Attorney

/s/ Brian K. Landsberg
BRIAN K. LANDSBERG
Attorney
U.S. Department of Justice

/s/ Daniel F. Rinzel
DANIEL F. RINZEL
DANIEL L. BELL, II
Attorneys
Department of Justice
Washington, D.C. 20530

III. OPINIONS AND JUDGMENTS

A. The opinion and judgment of the district court appear as Appendix A of the Petition for Certiorari.

B. The opinion of the court of appeals appears as Appendix B of the Petition for Certiorari.

C. The judgment of the court of appeals appears as Appendix C of the Petition for Certiorari.

D. The denial by the court of appeals of the petition for rehearing appears as Appendix D of the Petition for Certiorari.

IV. SELECTED EXCERPTS FROM THE RECORD

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

A. Stipulation

[Title Omitted in Printing]

[1] In accordance with the agreements reached at the pretrial conference in this action on March 1, 1974, and the conference between the attorneys for the parties on February 28, 1974, the plaintiff, United States of America, and the defendants, Hazelwood District, et al., stipulate for the trial of this action that the following statements may be accepted as facts, and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts stipulated, and particularly, but not limited to, evidence intended to explain the facts and circumstances surrounding any transaction. Each party hereby reserves the right to object, during the trial of this case, to the admission in evidence of any of the following facts or exhibits on the grounds of materiality or relevancy.

[2] 1. That the depositions of all present and former Hazelwood District employees taken in this case and exhibits attached thereto are admissible in evidence at the trial in this case subject to all objections made in those depositions.

2. That the attached Exhibit A is admissible in evidence, subject to objection as to its relevance and materiality.

3. That reports of the St. Louis County Superintendent of Education describe the formation of the Hazelwood District as set forth in the summary attached as Exhibit B and that Exhibit B is admissible in evidence, subject to objection as to its relevance and materiality.

4. That Plaintiff's Exhibit 1 is a true and correct copy of the current Missouri Faculty Certification Requirements, an official publication of the Missouri State Department of Education.

5. That Plaintiff's Exhibit 2, Volume 1 through 10, is composed of true and correct copies of certain records contained in the application files and maintained in the regular course of business by the Hazelwood School District.

6. That Plaintiff's Exhibit Nos. 3 through 48 are composed of true and correct copies of certain records contained in the application files and maintained in the regular course of business by the Hazelwood District.

7. That the race of each of the persons named below is black:

Anderson, Patricia A.
Boyd, Pearlie
Carroll, Ruby Lee
Carson, Timotheus H.
Catlin, Charlene W.
Collins, Beverly J.
Collins, Ernest C., Jr.
Cook, Cullen
Cooksey, Naomi P.
Cotton, Atry S.
Downs, Samuel L.
Ealy, Judith B.
Easter, Naomi J.
Edmond, Cynthia
Ellis, Beverly E.
Fitch, Jerry L.
Fletcher, Patricia A.
Florez, Westelle A.
Gray, Agnes B.
Guyton, Delores C.
Hairston, Charlene M.
Hamilton, Edgar J.

[3]
Hauk, Kenny E.
Hayes, Charles L.
Haynes, Evelyn
Hill, Marva J.
Houston, Barbara D.
Howell, Robert W.
Jackson, Carol A.
Jackson, Elaine
Jackson, Willette
Jones, Vina
Kincaid, Geneice
Lenoir, Nikki L.
Lockett, Lonnie L.
Lowe, Johnetta
Lowe, Melvin D.
Moore, Alice F.
Moore, Elwood J.
Mullins, Harriet D.
Novel, Derek R.
Palmer, Willie J.
Payne, Jesuita N.
Payne, Virginia
Penton, Delores
Reid, Sandra V. M.
Riggs, Alberta
Robinson, Barbara A.
Shaw, Georgia M.
Smith, Alexis J.
Smith, Eugene I.
Smith, James
Thomas, Carolyn M.
Thomas, Geraldine
Thompson, Monica M.
Thompson, Rosa L.
Triplett, Cozeene E.
Trotter, Gerald F.
Trotter, Jerome
Turner, Nellie
Wall, Gloria
Washington, James L.
Wilson, Mary E.
Wilson, Robert D.
Womble, Elizabeth A.

Entered this 26th day of March, 1974.

/s/ Don O. Russell
DON O. RUSSELL
WILLIAM A. ENS
Attorneys for Defendants

/s/ Daniel L. Bell, II
DANIEL L. BELL, II
RONALD L. OLESON
Attorneys for Plaintiff

EXHIBIT A

[1] The following procedures are included in the Hazelwood School District Policy Manual:

(a) The personnel office encourages all possible applicants to complete and have on file a complete application, even though no position is then available nor any openings anticipated in a particular area.

(b) The personnel director interviews on college campuses are open to all without restriction and are arranged by the personnel of the college. Each prospective applicant is given an application and encouraged to complete and return it to the personnel office.

(c) All teacher applications are filed in the personnel office.

(d) Vacancies will be reported through immediate supervisory channels to the personnel office.

(e) All applications shall be made through the personnel office.

(f) The personnel office will screen applications on file for qualifications and current availability.

(g) The personnel office will make any additional necessary contacts to secure applications for anticipated and/or existing vacancies.

(h) Interviews of all applicants with appropriate supervisory personnel will be arranged and scheduled through the personnel office.

(i) Wherein possible, all personnel who have immediate supervisory responsibilities will be included in the procedure.

[2] (j) All recommendations for employment will follow immediate supervisory channels.

(k) Final recommendations for employment to the Board of Education, including salary, shall be the responsibility of the superintendent.

(l) Following the interview/recommendation procedure, notification of employment status will be the responsibility of the personnel office.
Paragraph 532.2 of the Manual, p. 55, states:

"The objective in recruitment shall be to obtain the best possible certified persons within the financial ability of the district without consideration as to age, sex, race, national origin, political or religious beliefs in determining qualifications for employment."

B. Testimony on Deposition

[53] RON BERRY

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address and race for the record, sir?

A. Ronald Max Berry, 3556 Whispering Woods Drive, Florissant, Missouri 63301, Caucasian.

* * * *

[54] Q. So you came to Hazelwood first in 1969?

A. In 1970.

Q. So this is your fourth year?

A. This is right.
Q. You came as a teacher at–
A. McCurdy Elementary School.
Q. And when did you become a principal?
A. In November of 1971.
Q. At what school?
A. At Brown Elementary School.
Q. And that is your current position, correct?
A. Right.

* * *

[55] Q. Have you ever interviewed any black applicants for professional positions?
A. Yes, I have.
Q. Would you state their names?
[56] A. I am not familiar with all their names, I am familiar with two names. That is all that I can remember. There was a Mrs. Ellis.
Q. Would that be Mrs. Beverly Ellis?
A. Yes, and a Mrs. Reid.
Q. Any others that you recall?
A. I have interviewed one or two other black applicants but I cannot recall the names.
Q. For what position was Mrs. Ellis applying?
A. To the best of my recollection I think it was a primary position, second grade sticks in my mind.
Q. Do you recall what year that was she applied?
A. Not this summer, the summer before, that would be what, '72.
Q. Did you recommend her for employment?
A. No, I did not.
Q. Why did you not?
A. Because in the interview that I had with her I did not feel personally that she would be the outstanding teacher that I was looking for in my building.

Q. Who was employed in her place?
A. I don't really remember. Mrs. Davis, I think.
Q. Do you recall her first name?
A. Susan.
[57] Q. Is she black or white?
A. White.
Q. How was it that Mrs. Davis was better qualified than Mrs. Ellis?
A. Personal opinion through the interview and through – that is basically all I can tell you.
Q. And what was the basis for that opinion?
A. Its a very hard question to answer, I would think personal characteristics, personal traits, intangibles that you look at in an interview with an individual, love of children, willingness to accept children as children.
Q. Did you feel that Mrs. Ellis didn't love children?
A. No, I can't say that. I can't remember the interview that well.
Q. Can you try to point to some of these intangibles?
A. Well, its very difficult, I guess the Boy Scout's creed, or whatever it is, when you go down through the trustworthy, loyal, helpful, courteous, kind, honesty.
Mr. Bell: Thrifty, brave, clean, reverent.
A. These types of things that come across in a personal interview.
Q. Do you feel that Mrs. Ellis was not qualified for the position?
A. Yes, at the time, I did.
[58] Q. In other words you not only felt that Mrs. Davis was better qualified, but you felt that Mrs. Ellis was not qualified to hold that position?
A. That is right.
Q. Based on these intangible factors?
A. I think, if I remember, she also had several posi-

tions in a very short time and that made me concerned a little bit about how long she would stay with me.

Q. Do you understand what these positions were?

A. No, other than education.

* * *

[3] GENE ELVIN EAKER

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, the United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address and race for the record, Sir?

A. Gene Elvin Eaker, 4240 Chartley Drive, Bridgeton, Missouri.

Q. On what date were you first employed by the Hazelwood District?

A. I would say, at the beginning of September of '54.

Q. September, '54?

A. Yes.

[4] Q. In what capacity, Sir?

A. As Sixth Grade Teacher.

Q. And what was your next position?

A. My next position was Principal of the Russell Elementary School.

Q. And how long did you hold that position?

A. Eight years.

Q. And what was your next position after that?

A. My present position. Coordinator of Elementary Education.

* * *

[8] Q. I mean would you simply ask for him to send over or arrange for interviews for a certain number of applicants, depending upon how many vacancies existed,

or would you ask him to send over the best applicants, or something like that, or how would you frame your request to him?

A. Number One, I would indicate what specific positions were to be filled, and our general operating procedure is the persons who prefer those positions would be brought in for interview, and I think we can normally bring in, say, and you know if you have got one position, they would probably say, we need five or six people to be brought in. But that is open-ended. I don't think we ever really specifically say, we want two, three, four, five, six, seven.

* * *

[10] Q. Would you attempt to interview the applicant yourself at all?

A. No, I would not.

Q. So your part in this procedure would be to dispense certain information to the applicant before he was to be sent to be interviewed at the School, and then upon the recommendation by the Principal to review that recommendation in deciding what?

A. Deciding whether or not I could honor their recommendation.

Q. So you would make the decision as to whether a person is to be offered employment, is that correct?

A. Well, I would make the decision as to whether or not the procedure then could be carried one step further, which is to the Personnel Department in terms of this recommendation.

* * *

[12] Q. Have you received any instructions as to how to carry out your employment responsibilities?

A. Yes, we have the Policy Book, which itself outlines the general procedures.

Q. Does that book establish standards to use in employing people?

[13] A. It establishes that the most competent and best applicants that we feel are available and within the financial limitations.

* * *

[14] Q. What instructions have you given the Elementary Principals as to how to carry out their employment responsibilities?

A. That every applicant who comes there should be given a full and reasonable kind of interview that could be given, and that they should attempt to get the person that seems to best fit their situation.

Q. Have you given them any instructions on how to best find the person who would fit their situation?

A. We have used a form, which we actually developed, which contains certain attributes that they should be looking for in terms of teaching recommendations.

Q. Are you referring to the Elementary Interview Forms?

[15 1st] A. Well, yes. There is a form, which we use, and it also serves as a kind of communications device between the Principals and my office, and also between my office and the Personnel Office.

Q. What I was speaking of, was the form you were referring to?

A. Well, you have to show me the form that we are talking about?

(A short break)

Q. Referring to Elementary School Teacher's Form, have you instructed the person doing the interviewing as to how they are to use this form?

A. Well, yes, this was worked out, as one, it's a common form in terms of what we would use in these particular sets of criterium, which would give them guidelines in terms of what they are to be looking for when they apply. So these are some of the criterias that they would use, when each one of those certainly has interdepartment kinds of means which a Principal might pursue.

Q. Well, for example, have you indicated to the Principal, what is meant by knowledge of teaching responsibility?

A. I think the Principal can carry his own weight in terms of knowing what he is looking for in a specific type of situation.

Q. So, the ratings or evaluations, according to this form, would be left to the discretion of the individual Principals?

[15 (2nd)] A. Right, because he is looking at many different levels of functioning–kindergarten, First Grade, Second Grade, through Sixth, Music, Art, the whole thing. It is Personnel who will be responsible for hiring.

Q. I see, the category in here marked personal appearance and grooming, and I take it as then the categories are rated as above average and below average? Would it be true as that above average personal appearance would depend or would vary from Principal to Principal?

A. I think this is a reasonable assumption.

Q. The same would be true of the other areas listed in here, is that correct?

A. Yes. I think that each Principal brings into an interview certain examinations and certain information related to his own school that would have some influence on how the rating might go?

Q. On the interview form, would the personality area be more important or less important or the same importance as the poise, self control and confidence area?

A. I can't say that would be any more important. I

can say that it's extremely important in the terms of how a candidate might perform on the job.

Q. I take it that the weight to be given to each of these areas in which an applicant is rated is varied from Principal to

[16] Principal?

A. I think so, based on what I previously indicated.

Q. You said that was correct, or they would vary?

A. I think it would vary, based on what I said previously, that each Principal would have certain aspectations and information relative to his own school.

* * *

Q. OK, I think you described to me what the process is for hiring individual teachers, and I wonder whether that process has changed or been modified in any respect, since you have come to Hazelwood District?

A. I can't think of any specific way I could say it's different. I think it's always been one in which we have attempted to get the most competent teachers, and it's been one of which the immediate supervisor has had some responsibility in the total process of selection of teachers.

Q. Must an applicant always submit an application prior to being interviewed?

A. I think that is the general procedure. I can't think of any instance where one was interviewed without the benefit of having an application.

[17] Q. Must an applicant always be interviewed in order to be hired?

A. Yes. I would say there would have to be sufficient information relative to a candidate, when this recommendation is processed.

Q. And would Hazelwood interview only if there were vacancies existing?

A. I think that is our general procedure, that we interview based on either known or anticipated needs.

Q. What qualifications must an applicant absolutely need before being employed?

A. Well, they must be certified—that is one requirement.

[18] Q. Is there any preference given to those that have completed their student teaching in Ladue?

A. In where?

Q. In Hazelwood.

A. Again, if I say only to the extent that a person has proven their ability to perform, or to come up to the expectation of a given administrator.

* * *

[26] Q. Where does Hazelwood get its student teachers?

A. From S.I.U., Carbondale, well it could be Carbondale, but mainly Edwardsville, Southeast Missouri State University, University of Missouri, St. Louis, University of Missouri, Columbia, and perhaps others, to a lesser degree. Those are the ones I can state specifically.

* * *

[27] Q. Have you ever had any black student teachers?

A. I do not recall specifically, because I do not see them. I see the paper, but I do not seem them, and besides it would make no difference to me whether they were black or white, or Indian or any other race.

* * *

[3] FRANK FOX

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, United States of America, deposeth and saith:

DIRECT EXAMINATION

Q. What college degrees have you received?

A. I have a Bachelors and a Masters Degree and have

finished all the work for a Doctorate Degree, but I haven't finished the dissertation, yet.

Q. Where did you receive those degrees?

A. University of Missouri, Columbia.

Q. Could you describe your employment background in the education profession?

[4] A. I started here at Hazelwood, that was the first educational position I had in 1962, taught four years at the senior high school in the area of social studies, was Assistant Principal for two years at Hazelwood Senior High School and have been Principal at Hazelwood Junior High School, this was the sixth year and one of those years I was on leave of absence, which was last year.

Q. You were a Principal for how long?

A. This is the sixth year. Last year I was on leave of absence.

* * *

[5] Q. Could you describe to me your role in the employment process for teachers?

A. Well, we make the Secondary Coordinator aware of vacancies that are known to exist in the building. This is done usually two ways; first of all, in February we generally, by enrollment counts, try to determine vacancies that we no will exist, either increases or decreases. Or, in talking to all the staff members those that won't be back. This is then prepared and Mr. Huss assembles the list from all the secondary schools and puts together a vacancy list, that is known at that particular time. Of course, during the school year if any other vacancies, due to resignations or leaves of absence, occur, you always notify him of those vacancies.

[6] Q. Do you select any persons for interview, or is this done by the personnel office?

A. Personnel office selects or establishes those that

are going to come in for the interview.

Q. Do you do – who helps you in the interviewing in your building?

A. There are, I would say, that at any given time when we have an interview department chairman are involved in their particular subject area. Myself or one of the other administrators also interview any applicant that comes in.

Q. Who makes the written recommendation as to whether or not to hire a person?

A. The final one, I make it. I make the final recommendation to the Coordinator of Secondary Education, as far as recommendation of employment.

Q. How do you decide which person you will employ?

A. Well, after we have exploited the interviews of the various people that come in for a position in the department, the department chairman and myself and if the assistants have interviewed these people, we get together and determine the qualifications of the people that we have had in, and then establish the most suitable candidate and then make a recommendation for the Personnel office to contact that person offering him a job.

[7] Q. Have you received any instructions as to how you are supposed to determine qualifications?

A. Well, qualifications are determined by hiring the best possible applicant for a job. You know we–the department chairmen are subject matter individuals and they are examining their background information and we, as administrators, are attempting to see how they would fit into the particular facility and their personality and how they handle a particular situation and trying to find out their philosophy of education and things like this. But, there is no, other than hiring the best possible candidate, no list to work from.

Q. That would vary from interviewer to interviewer?

A. I'd say yes, because they are all individuals, but I know myself and the assistants and the department chairmen sit down and discuss the kinds of things you are interested in finding out about and there is usually a consistancy in that. We are all aware of the kind of questions and things we are going to ask these people.

Q. What would those things be?

A. Well, you might try to find out what kind of background experience they have had, what kind of [illegible] activities they are involved in, in school. The kinds of employment they have had, both within the teaching and outside of teaching, the contacts with youth groups, Boy Scouts and Girl Scouts, things like this,

[8] extracurricular activities. How there voices and personalities are, that they have these kinds of things. And, I think also, you're trying to get at the kinds of questions that they might have with a position. Some are very familiar with the St. Louis area and some aren't. Sometimes they have some questions about the St. Louis area.

Q. Would you prefer to have a person with an M.A. over a person with a B.A.?

A. No, I don't think there would be any–I think the quality and quantity of the education and experience is something you have to evaluate. I don't think a master's degree necessarily means that it's a higher degree teacher than somebody who is straight out of school with a Bachelors degree.

Q. Would you prefer to have a person with more experience over a person with less experience?

A. Again, it's the quality of experience. I'd say if somebody has worked in the junior high school, I think you take this into consideration. If they have worked in the junior high school or elementary or on a college

level, I think you have to evaluate the kind of experience.

Q. Is there any minimum level of college you would like to have?

A. Well, the minimum level would be somebody that had been certified to handle the particular position. I mean,

[9] they would have to have a college degree with the necessary certification so that they would be able to go in the classroom.

Q. Are there any minimum classifications other than that?

A. No.

* * *

[3] LAURENCE J. FUQUA

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address and race for the record, sir?

A. Laurence James Fuqua. The address is 1070 Lindsay, Florissant, Missouri. Caucasian.

Q. What is your present employment?

A. I am principal of Hazelwood Junior High School.

Q. How long have you been so employed.

A. I was employed as principal on July first, that is when my term began, 1967.

Q. And what was your employment prior to that?

A. I was Assistant Principal Hazelwood Senior High.

Q. How long did you hold that position?

A. From February, 1959 until I was appointed Principal.

[4] Q. And prior to that, what was your position?

A. I was a classroom teacher.

Q. And where were you employed?

A. Hazelwood Senior High School, it was Hazelwood Junior-Senior High School at that time.

* * *

[5] Q. Would you describe your role in the employment of teachers?

A. Okay. This is basically what I do, I have my Department Chairman, I give them information on expected enrollment

[6] for the coming year, and this is just an anticipated enrollment and then they come up with the vacancies they think they will have because of the enrollment we anticipate we will have. We compile a list of vacancies. that we anticipate and I send that list to the coordinator of secondary education.

Q. Then what happens?

A. Then the list is, as I say, compiled, just my enrollment you're interested in, right?

Q. Yes.

A. Then when this has been established, dates are set up, we notify when we will be interviewing people and they set up dates that the people will be coming to see us and the times and they tell us how many will be coming and then either I interview each applicant or one of the associated assistant principals will interview them and then we have the Department Chairman interview the prospective candidates of the department in which the teacher would be assigned. If it's social studies it would be in social studies, if English, it would be the English Department Chairman. Then, all the people, over a period of time that have been sent to us, are interviewed and an evaluation is made by the Department Chairman and they will meet with me and we discuss each one

and they make a recommendation on who they recommend and we get together on the recommendation and we arrange them in the order or recommendation and if they

[7] are not recommended. We do that, too. And, if I tried to call former employees or teachers, in the case of a person who hasn't worked as a teacher except a student teacher, I talk to him. I can't always get a hold of them, but we try. Then, on the basis of evaluation we come up with—we try to employ the person who best, we think, would do the job, the best and then the principals bring the recommendations to the coordinator. And, then the Junior High Principals and myself sit down with the coordinator and make a recommendation and maybe the Junior High School Principal may want the particular person I want and we would decided which one would get that particular teacher, where it would do the most good. And, then if they accept the position, we are notified that they have accepted the decision.

* * *

[10] Q. What instructions have you been given as to how to carry out your role in the employment process?

A. To hire the person we feel is the best person for the job.

Q. Have you been told how to go about finding the best person?

A. I don't know what you mean?

Q. Have you told how to identify the best person?

A. No. We have to do it on the basis of our judgement. And it's a subjective thing.

Q. Have you given your subordinates any instructions on how, in the employment process, to do this

A. The person that can do the job the best

Q. Have you instructed them as to how to go about doing
[11] this?

A. No

Q. Of the applicants you interview, how do you select the person to be hired?

A. I told you that once.

Q. I am talking about his qualifications and how do you tell one is better qualified than another?

A. Well, I leave that mostly up to the Department Chairman.

Q. How do they tell?

A. Well, they talk to them They determine whether or not the subject matter is–one example, for instance, I wouldn't know anything about music. I wouldn't know anything about Latin. So they talk to the person, by talking to them they spend maybe an hour or an hour and a half talking to them and seeing what they know about the subject, voice quality, personality, and attitude.

Q. How do they measure voice quality?

A. Alright, suppose there is a person who is tongue tied and we can't understand him, that would be an example.

Q. Would that be the only–

A. That is an extreme example.

Q. Would this be just to judge speech impediments?

A. Well, to see whether or not they can be clearly under-
[12] stood.

Q. That would be the only requirement?

A. That is an example, there is nothing put down, I mean it's a judgement on the person of the person doing the interview, do you understand what I am saying?

Q. What other qualifications do you require?

A. Well, we don't have any written qualifications, it's a matter of judgement on the Department Chairman's part.

Q. So that would vary from chairman to chairman?

A. Definitely.

Q. Do you prefer to employ a person with an M.A. over a B.A. degree?

A. It doesn't make any difference to me, depends on whether or not they can do the job.

Q. Do you prefer more experience over less experience?

A. No, not necessarily. It depends on whether or not they can do the job. It can be a person with twenty years experience and not be as good as a person without experience.

* * *

[3] J. W. HORD

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, the United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name address and race for the record, sir?

A. J. W. Hord 31 Rolling Hills Drive, Florissant, Missouri. White.

Q. And on what date were you first employed by the Hazelwood School District?

A. November 15, 1962.

Q. And in what capacity?

A. Director of Personnel.

Q. Have you served in any other positions with the Hazelwood district?

A. As paid position?

[4] Q. Paid, unpaid.

A. Yes.

Q. And what position?

A. Board member.

Q. When were you a board member?

A. February, 1957, for four years. Three and a half years to be exact. Let me correct that, that is four plus years.

* * *

[5] Q. Could you describe, generally, what your present duties are as Director of Personnel?

A. Basically, it's to keep the records and the files of all certificated and non-certificated personnel, and I have been the recruiter for the Hazelwood School District for twelve years, this is recruiting teaching personnel as well as non-certificated.

* * *

[11] Q. Could you describe the application and hiring process in Hazelwood?

A. The application you're talking about, the form or the process?

[12] Q. The procedures for applying and for being hired?

A. Actually, everyone must file an application with the personnel office. We accept these requests for applications either by telephone or by letter, by personal contact with a friend or by distribution to the individual college campuses.

Q. You said you accept the requests for application by telephone. How do you mean that?

A. In other words, people will call in and ask for an application to be sent to such and such an individual and we readily do this.

Q. So you would send applications to everyone requesting them?

A. Yes.

Q. What happens next after the application is requested by a person?

A. The application is sent or given to the individual

and of course we have to record it until the application is received back in the office.

Q. And what happens at that point?

A. At that time, the application is normally, – normally we notify the people of the receipt of the application.

Q. Following notification of the application being received what then happens?

A. Nothing until vacancies occur within the Hazelwood

[13] School District.

Q. Then what happens?

A. We are notified by the coordinators of either secondary or elementary education that they have an opening then we attempt to contact as many people as we can to advise them of the opening in the district and to set up an interview date.

Q. Now, when you are told by the coordinators or principals that there is an opening, I would take it you would give to them or you would rather try to arrange interviews for all applicants who appeared to be certified, is that correct?

A. No.

Q. Well, what would you do in that case?

A. We would, from the standpoint of the numbers of applicants that we have, if they had one opening we would attempt to get as many applicants available as they had requested. It may be six and it may be ten. If there is only one position then those interviews would be arranged by the coordinator with whoever had the vacancy. If they made a selection from that group then no one else would be called. If they do not make a selection we would attempt to get additional applicants.

Q. What I am trying to get at is how would you select as to what interviews would be contacted?

A. We are talking about two different periods of

time. We are talking about the last four or five years, and particularly the last two or three

[14] years, prior to this time and almost twelve years ago and it was a completely different picture of the days of twelve years ago. We would write everybody that applied in order to fill a position. Today, we would probably have a great number of applicants that we can handle so what we would do is the people we are sure they are available for the positions and have contacted us, those would be the people that we call first.

Q. You said twelve years ago you used to try to interview everyone that applied?

A. No, I didn't say that. I said we used to contact everyone to tell them that there was a vacancy.

Q. And now you attempt to contact who for a vacancy?

A. The people that have notified us that they were available for a position and the ones that we are sure are available, these are the first ones that we contact.

Q. Okay. Well, how do you mean persons have notified you to say they are available?

A. Because we have people who are constantly calling the office advising us of their availability.

Q. So you would select for or arrange interviews with the persons that have called the office and asked, been continually asking for interviews? They would be first?

A. This is part of it.

Q. Alright, who else would be included among those contacts?

[15] A. Those people who were rather recent applicants.

Q. Anyone else?

A. And if we have enough openings, we would attempt to contact a great number of the people depending on the teaching area.

Q. Okay. How many people do you like on interview for each particular vacancy?

A. It depends on the principal.

Q. Okay. The principal may select different numbers?

A. It depends on the coordinator and the principal. Both may decide we only want six or seven; or three or four; or ten.

Q. So, if I understand this correctly, to select or interview you would check to see if the person was certified or appeared that he would be certified and then you select from those persons the persons who have notified the Hazelwood district that they are available for employment and by notification I mean other than by submitting the application?

A. Right.

Q. And in addition, you would select to arrange interviews with rather recent teacher graduates?

A. No. I didn't—the applications that were received at the most recent dates.

Q. For how long is an application considered?

A. For the—as long as it is in the active file it can

[16] be considered.

Q. For—and that would be for how long?

A. At the present time, at the fall, late fall, or early December we contact all the people who have an application in our file asking them if they want to continue to keep their application active. If they respond to this then it's kept in the active files and if they fail to respond then it will be put in the inactive file.

Q. Do you decide not to interview applicants on the basis of anything other than certification as far as their qualifications are concerned?

A. Would you repeat that question?

Q. Alright. When you are selecting persons to inter-

view, would you select them on any other basis than their certification as far as their qualifications are concerned?

A. No. Just one moment, when we talk about certification there are certain areas which applicants are not aware that they are not certified to teach and we check this very closely. As an example, science, if you're a chemistry or physics or a biology teacher, you may not necessarily be certified to teach general science in the seventh or eighth grade so, therefore, many people are not aware of this. So many times I have to determine whether or not they can be certified in this area.

Q. But apart from that, you don't look at any other
[17] qualifications?

A. No.

Q. Has this process been in effect since you have been in the district?

A. Yes. One clarification at this point, we screen all secondary applicants. Elementary administrative for the past 2 or 3 years have screened their own applicants up to this year and then picked their own applicants.

Q. I didn't follow that.

A. You asked me if there is any difference in the procedures. Yes, there was a change. In other words, two or three years ago we were looking for particular types of elementary teachers with open consept background and they screen their own applicants. In other words, they selected the applicants that they wanted to have come in for an interview.

Q. You're talking about the principals?

A. No, sir. I am talking about the coordinator of elementary education or his staff, but that was the only difference. That was for a two or three year period.

Q. Do you recall what period that was?

A. That was about two or three years prior, for the past two or three years in elementary.

Q. For the past school year included?

[18] A. Somewhere at—it was used part of the time and part of the time it wasn't used. Yes, the secondary we have always contacted the applicant.

Q. What kind of qualifications did you say they were looking for?

A. They were looking for special types of backgrounds in elementary education having to do with the open consept school.

Q. Dr. McDonald showed to us a form which is Government's Exhibit one of his deposition and he said it was a brochure distributed as part of recruitment in the Hazelwood school district but that it was no longer in use. I will show that to you. Are you familiar with that?

A. Yes.

Q. Has any brochure been developed to take its place?

A. An attempt was made to develop it but there was not agreement as to what should take its place and I suggested that we didn't need one.

Q. Was any brochure used prior to that one?

A. No, sir. None at all.

Q. Prior to being interviewed must an applicant always submit an application?

A. You need to clarify the interview. Are you talking about the interview for an actual position or on the college campus?

[19] Q. For an actual position.

A. He must also have on file in the personnel, an application.

Q. Did you say almost or must?

A. Must.

Q. Must this be a completed application?

A. Yes.

Q. Must an applicant always be interviewed to be hired?

A. Yes.

Q. When do you arrange for interviews, in what circumstances?

A. We arrange for interviews only when we have a position available in the Hazelwood School District. This is somewhat different than other schools because we never interview without positions available. There are a few exceptions when someone is in and wants to talk to someone but basically, we interview for positions that are available.

Q. In addition to the application form, itself, what documents must an applicant submit prior to being offered a position?

A. In some instances we require, the principal requires, placement papers, but there have been people employed without placement papers because they have referred to references or the colleges have called people where they have worked prior to

[20] the employment

Q. Now, I take it in deciding which applicants to interview, of those that you have submitted to interviewers to select for interview, how does he choose which ones he is going to interview?

A. I'm afraid I missed your point. Are you saying to me how the coordinator determines who he is going to interview?

Q. Well, you submit–you choose applications to submit to the coordinator and the building principals, is that correct?

A. No. Just for the coordinator.

Q. Only the coordinator?

A. Only the coordinator.

Q. Do you know what he does at that point with the applications?

A. Well, he only gets the applications when we set up the interview, this is the secondary. When we set the interview date up he gets the application, same with the elementary.

Q. So he does not choose when a person will be interviewed?

A. The secondary doesn't. I pointed out earlier that there was a change for two or three years in the elementary. So, it's possible that the elementary coordinator or his staff will make the selection of people that are going to be interviewed.

Q. Is that still in effect at the present time?

A. It's changing back at the present time, no. It's

[21] coming back the other direction where the personnel office again will contact–will arrange all the interviews.

Q. Now, why is it in selecting persons for interview that you contact first those persons who have notified the office that they are interested or the more recent teacher graduates. Why did you choose these two groups of people?

A. First, for the part of expediting we may not have but two or three days when they notify us that they have a group of openings and had minimum time that they want these people that they allow us to get these people in for interview is restricting. And, in the St. Louis County one must understand that we are talking in terms of twenty-five or twenty-six school districts on the Missouri side and the surrounding territory plus all those on the Illinois side and we must remember also

that all these people make applications to us also make application to fifteen, twenty, or forty other school districts. So, therefore, many people have been employed at the time that applications have been accepted by the Hazelwood School District.

Q. So your competitors would be the twenty-three neighboring districts and the ones on the Illinois side?

A. Twenty five or forty, yes.

Q. So, you said you have two or three days to get people in for the interview?

A. I may, depending on the time they give us. It could be

[22] two or three days or two or three weeks.

Q. You said they. Who do you mean by they?

A. The coordinators.

Q. So, how long is it that the coordinators usually take to fill their vacancies once they know they exist?

A. It depends on the time it takes their people on their staff to interview and to complete all the interviews.

Q. Do you have any idea what that usually is?

A. It varies from school to school, it varies from job to job.

Q. But you gave two or three days as an estimate?

A. No. I said it could be two or three days. I don't remember any that are much over two or three weeks. Most of them are in the vicinity of a week but it's still short notice to get the correspondence to the applicant.

Q. So the employment process after the application is received usually takes place in about a week, the remainder of it?

A. Would you repeat that as you said it?

Q. Alright, the employment process after the application is received usually is completed within a week, is that about right?

A. No. You said after the receipt of the application. No. It wouldn't be after the receipt of the application, after

[23] our notification that there is a vacancy in the secondary or elementary schools, then it takes—they give us about a week to get the people in. Normally, about a week.

Q. Oh, so after you notify the person that a vacancy exists you have about a week, according to the coordinators, to set up an interview, usually.

A. Right.

* * *

[27] Q. Have you made any special efforts to attract qualified black applicants?

A. Yes.

Q. Would you describe them?

A. Through the years as I have been interviewing I have made the request through placement directors.

* * *

[56] Q. Did the school board ever discuss racial segregation in the public schools while you were a member?

A. No.

* * *

[57] Q. Where do most of the Hazelwood teachers come from? What area:

A. They come from all over the country. Most teachers will come from the St. Louis area.

* * *

[3] FRANCIS C. HUSS

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, the United States of America, deposeth and saith:

BY MR. BELL:

Q. All right, sir, would you state your name, address and race for the record, sir?

A. Francis C. Huss, 11535 Caraway Court, St. Louis,

63138. I assume my race is white.

Q. When were you first employed by the Hazelwood District?

A. I began my employment on July 1, 1959.

Q. In what capacity?

A. High School Principal.

Q. And which High School?

A. The only High School then, it was at a different location, Hazelwood High School.

[4] Q. How long were you employed as Principal.

A. Eight years.

Q. And what happened after you left the job as Principal?

A. What happened?

Q. Where did you go?

A. To my present position as Coordinator of Secondary Education.

Q. What year was that?

A. Sixty Seven.

* * *

Q. Have you had any other positions at all with Hazelwood?

A. No.

Q. What are your present duties as Coordinator?

A. My function is to plan, direct, coordinate and supervise the Secondary Education Program.

Q. What duties do you have with respect to employment?

A. What duties?

Q. Yes.

A. Well, just in the general process, when the vacancies are assembled or developed, all the Secondary School vacancies come to my office, and I inform the Personnel Office of these vacancies, and of the times that we want to

set up interviews, and generally when we are doing mass interviews, the number of applicants that we'd like to interview on that date. As I say, when we are doing the mass interviews at the times they are designated to come,

[5] they are directed to me in groups, small groups which could range, oh anywhere from five to twenty, and at this time, I provide them information concerning the school district, and its program of studies, and show them as to what the vacancies are that pertain to their particular field that they are in, and we disperse or send them to my office to the building for which they want to interview, building or buildings. In some cases, then after they go through the interview process in the buildings, at sometime that I designate, we the Principals and I review the applications with the various recommendations concerning the outcome of this application, and I refer back to the Personnel Office with our Recommendation.

* * *

[8] Q. I was referring to an earlier stage in the process. Mr. Hord submits applications to you when you tell him what vacancies are existing, is that correct?

A. I tell him what vacancies are existing, and how many people or applicants we will interview, on a given number of interview days, so many per day, and he operates within that constraint. For example, this Spring, I set three interview dates in one week, say Monday, Wednesday and Friday, and told him we would take from twenty to thirty applicants at a particular time of day. And now, I am just giving times of dav. Let's just assume that it's nine o'clock and then in his office knows of vacancie , and they will operate within that constraint of numbers because we know how many we can interview adequately in that period of time, and they will send us that number within that area, and as I

say, send them to the building, and after we have gone through that interview period, we evaluate that group through the recommendations that come up the line, and alike in the building. I'm sure the Principal will discuss it thoroughly with their department chairman, and then the department chairman recommends to the Principal and the Principal recommends to me, and I guess, I more or less inform the Personnel Office to contact them for em-
[9] ployment to see if they want a position or to accept the position, and then if they do, it would then be referred to the Superintendent for approval of salary, and on to the Board.

Q. What I'm getting at is when Mr. Hord sets up interviews. Do you screen any of these people out before sending them on to the Principal?

A. No. Every applicant, unless they choose not to goes after the information I have given them, when I inform them of certain things that we will expect, for example, if it's a mathematical position, we will tell them that we will expect them to be a person that is qualified to teach mathematics through the twelfth grade to teach in the secondary schools, and basically when they see what the position is, or something, there will be a very rare occasion when one will see not to go on through the interview, but that is their decision, not ours. We do not screen.

Q. Does Mr. Hord screen out persons?

A. Not that I know of.

Q. Is it your understanding that he simply sends you all of the applicants in a given field, or tried to arrange interviews for applicants in a given field.

A. Within the constraint of numbers. In other words, I know that he has more applicants than I am requesting, and I would assume that he would logically work from

the most recent ap-
[10] plicants he has.

Q. Well, if you were to give him a certain number of applicants that you would wish to have present for interviews, do you know how he would go about selecting those applicants out of the total number that he does have?

A. From my observation, from my office to his office, the secretary would contact by telephone or letter the most recent applicants, up to, as she works through them, the number until we have, if it's thirty I said is the limitation, and they contact them and bring them in, that it might not be just one position.

Q. Does Mr. Hord screen on the basis of qualification at all?

A. No, not that I am aware of.

Q. Now, how do you determine the number of people that you would wish to have present and interviewed?

A. It is based on our experience interviewing people, and the amount of time we want to spend with them, or we'd like them to spend with us. We know about how many we can interview, and also the number of vacancies there is. No point in our interviewing four or five hundred applicants for say ten positions. We just won't do it. You'll find, and our experience has been, that we'll find the well qualified applicant in the interviews, but we just haven't got the time to interview all the people that apply.

[11] Q. Could you give me an average of how many persons you would have interviewed for a particular vacancy?

A. No, I couldn't.

Q. That would simply vary from time to time?

A. And the type of vacancy. Obviously, whether you're aware of it or not, there are certain fields that (I hate to use this term, but as some people say, they

nearly get to be a dime a dozen) is that so many people qualify that have gone into this field, that it just gets voluminous.

Q. Well, you use the word, not the word but the limit, five to twenty persons a few minutes ago, I believe for the number. Would that sort of be a general guideline that you would follow as far as number of people to be interviewed for the particular vacancy or position?

A. I need to clarify. I said I would use that for a reference or something of that nature. That is to lay in one group that it would take from five or ten or twenty or thirty. Probably in the twenties or thirties is the most I would take in one large group. But there could be applicants for one position in that you see not any one group – for example, I don't ask them just to bring in applicants for mathematics field alone. We give him the total list, and say bring in as many as you can. Now there may be occasions, when in the early interview procedure in the Spring, where we take industrial arts, for example, they are

[12] very difficult to locate, and we might interview specifically for some of those areas.

Q. Which fields are the most difficult to obtain teachers for?

A. I would have to say just one field, and that is probably Industrial Arts.

Q. Which would be the easiest to obtain teachers for?

A. Well any one, but at the present time, probably Social Studies, maybe then, English, and Phys. Ed. Those fields are fairly easy, but Industrial Arts is really hard. We fill the positions, but sometimes it's harder to do or to find. There are some – .

Q. Do you ask Mr. Hord to arrange for these interviews only when vacancies exist?

A. Well, in general, but we also do it in anticipation of

vacancies that will exist during certain times of the year, and there again you will just have to accept that it's based on our knowledge, gained through experience. For example, come February or March, I'm pretty sure I can tell you certain areas I will have to interview in, because I anticipate vacancies.

Q . How do you determine whether or not you can anticipate those vacancies?

A. Based on the past turnover, and also on our budget for additional staff member. Like at this time we are developing for

[13] next near. We know there is a lot of things that go into it. We have to do some pre-enrollment evaluations for the following year to anticipate enrollments in certain subjects, which generally there are trends that have been established over the years. We had projections as enrollments. We have got that refined down to a point where with computerization, we can even do it by zip codes, and a lot of this on anticipated enrollment. We set up in a budget certain number of teachers which we will need additionally. Next year, I anticipate a five per cent enrollment increase. Well the first thing a person would think is that if you have a five per cent enrollment increase, you would need a five per cent more teachers. Now I won't hold within that general constraint as far as classroom teachers, but somewhere next year, we can't hire five per cent more teachers. No classroom space.

Q. Now, what was the reference you made to zip codes. I didn't follow it.

A. I was just giving you some examples of how we know. Kirby Jr. High School next year, which is on the near East side District, will have more growth, so I know that Kirby Jr. High School will need more teachers, so we have got that down through studies of the East, of

the growth that were made through studies of the conditions. It's just planning.

Q. Do you ask the teachers any time in the year if they will be returning for the following year?

[14] A. Yes.

Q. When would that be?

A. We have a procedure. Generally between the first couple of weeks of February that we ask teachers to indicate to us if they wish to transfer to another position, if they know of any known vacancies, and at the same time, generally in that period of time, somewhere in there, the Principal asks the teachers if they will indicate to them as soon as they know whether or not they are returning, and you don't get too good a results.

Q. Do you find out later with a little more accuracy?

A. Yes.

Q. When would that later determination be?

A. A lot of them don't let you know until the date due for the contract to end. And unfortunately, I don't know if this is meaningful, but there are people who will go off to the end of the School Year, and accept a new contract, and then resign.

Q. When is the contract due back?

A. The 15th of April, I think they have to be notified prior to the 15th of April, and they are allowed to take fifteen days, they have fifteen days from notification for their contracts to come in, but I think now there has been some adjustments to this, but generally the 15th of April.

Q. I suppose this is a matter of State Law?

A. Yes.

[15] Q. Now, at the mass interviews at which you are present, do you attempt at all to find out anything at

all about individual applicants, or is this merely a way you provide information to them?

A. In general, it's a way I provide information to them. I guess the only sense that I would find out any information about them is when I read off the list of vacancies, and then I let each one come up and say individually to which building they want to go, or buildings to interview for the position, and that would be the only way I would find out anything about them, unless they ask me a specific question. Not much.

Q. You do not make any kind of recommendation at that time, I would take it?

A. No sir.

Q. Now, other than these mass interviews, do you have any individual interviews with applicants for teaching positions?

A. For teaching positions? Yes, for example at the present time, we get an occasional resignation, or we know that we will have one, or maybe two vacancies at the semester, or maybe when there is only a vacancy, and one or two vacancies, then I would schedule them on an individual basis. But in general, it's an information type thing, as it's in a mass thing. I try to cover the same type of material. I try to give them some written information about the District, just the physical things about

[16] the District, where the buildings are located and some things of that nature, and then they get a copy of the salary schedule, a couple have had that prior to that, but always I give them those two things, and general information about the curriculum.

Q. In that sort of interview, would you make a written recommendation?

A. No sir. The recommendation always comes up

the line.

Q. Does the recommendation always go into the applicant's personnel file, or application file?

A. Yes. Now there again, it's in general as far as I know. It does, and as far as I know it does. We try to keep them all in there. There is only one place which you may have something in mind for maybe two or three, and they have interviewed for two or three buildings. There is a possiblity that one building might not catch us the application, but in general, there is one.

Q. Now who makes the initial recommendation to hire people?

A. The secondary school Department Chairman.

Q. Is this a written recommendation?

A. It comes up through the form we more or less have established that I think you have probably seen.

Q. Who makes the most important recommendation?

A. In my opinion, it's the Department Chairman, because they are the person that would work the closest with the Applicant. The one he would rely the most on.

[17] Q. Would it be possible to describe the other recommendations as relying very heavily on the Department Chairmen's recommendation or as being a type of thorough ratification, or are they?

A. I'm not sure I understand that.

Q. Are they making decisions for themselves for example, you said that the most important recommendation you thought was the Department Chairmen's. Would his recommendation generally be followed?

A. By all means. But I think in any line and staff organization that the—you're going to have to justify it to your immediate superior, and the way they generally do it in the building in most cases, the Department

Chairman and the Principal will go over it, and like we do here, on the building level, they will go through the applicants and say, this is one I am recommending, and gives some reason. And afterwards, the Principal signs a recommendation and sends it on to me, and then we go through the applications over here, then I make the recommendations on that basis to Mr. Hord's office. But you've got to understand that we will categorize them into three groups. When they finally get here, they will either be recommended for employment or for future consideration, or not recommended. Now, the reason we do that, in some cases, you contact one for employment, and say they don't choose to come, and we would go to the next person the Department Chairman feels to be the next choice.

[18] Q. Who is in on the actual interview of applicants of the building?

A. The Principals and the Assistant Principals and the Department Chairman. There is an Administrator and a Corporate Chairman, which would classify as Supervisory.

Q. Does the Assistant Principal or Principal have veto power over the recommendation to hire?

A. Well, I would assume, obviously by the authority of his position, he would have that, yes.

Q. And would you have a veto power over the Principals?

A. Yes, because they report directly to me.

Q. I take it from what you said, that normally, while such powers exist, they would not be exercised, is that right?

A. Normally, they wouldn't.

Q. Does anyone in the building, such as the Principal, the Assistant Principals or the Department Chairmen maintain any files or applicant records?

A. They're not supposed to. I don't—No, I don't think they do.

Q. Have you received any instructions as to how to carry out the employment of teachers?

A. No, other than just it's our responsibility to hire the best candidate for the position.

Q. Have you been told any specific ways to find the best
[19] kinds of teachers?

A. No sir. The procedure we use in the elementary and the secondary schools is pretty basically those that I have established myself through the years of working here, and through the consultation with my administrative people. And with the approval of course of my superiors.

Q. What instructions have you given the Principals, Assistant Principals and the Corporate Chairmen as to how to go about hiring teachers?

A. That, as a result of their interviews that I want them to recommend to us the person that specifically fits that position best in their opinion. The best person for that position.

Q. Have you given them any instructions on how specifically to identify the best person for the job?

A. I think it's more or less understood that we have a curriculum, and it's a pretty formally established curriculum, and each course has a curriculum, and the Corporate Chairmen knows what they're trying to teach there, and there are certain things in that nature they look for, and then there is a lot of intangible things they have to look at. The Department Chairman has to evaluate that person from his whole department as a team, and as these things are rather intangible, but we think they do them competently. As far as any specific written or any instructions like that, No.

* * *

[23] Q. Now you said that there were three types of recommendations that could be made, and I think you elaborated somewhat on some of those, were a recommendation for employment, a recommendation that the application be held for future consideration, and a
[24] recommendation against employment. Could you explain a little further on how you would determine whether or not to recommend for employment, as opposed to recommend holding for future consideration?

MR. ENS: Objection to this particular point. I don't think that it's ever been stated that these are his recommendations, merely that these are the recommendations that come to him.

Q. Right. How would it be determined?

A. Well, some cases after an interview is obviously determined, that a person, although it may have appeared first on paper that they were qualified. You find out that they are not. We—say for example, on their application that they are qualified to teach a subject, and they aren't. In a case like, say Home Economics, for example. They would say that they are Home Economics Teachers, but they are not Vocational Home Economics Teachers, and they have to be in Hazelwood. Well, we may not discover this until we go in and talk about this. Their training is general, and that could be one thing you find out, that a person doesn't have a Certificate. Now these are paper things in a lot of intangible things, voice, articulation, personal things or intangible things. And people see that this person won't work out, and they won't recommend, they don't want them under any circumstances.

* * *

[25] A. And not be given any future consideration.

Q. Well, what I'm trying to get at is how you determine whether a person should be held for future consideration, as opposed to being recommended at the time.

A. Well, there again, I think it's just a personal judgment thing. If the Department Chairman they have talked with, this person, the things they have said about their training, their enthusiasm to teach this particular subject, they have looked at maybe ten applications, and they have two positions, and they say, gee I'd like to hire six of these people. Now, these two people stand out, so we'll take those. If we have any other positions, I would be happy to employ any of these other folks. It's a personal and tangible thing.

Q. What do the people at the building, the Principal, the Assistant Principals, and the Department Chairmen attempt to find out during the interview?

A. Oh, I think a lot depends on the person that is doing the interviewing. It would be hard for me to say what every person asks. There again, I think the main things they look at are intangible things, such as they see in the classroom. That is important to them as a teacher, and I just can't say what they would do.

Q. So I take it from what you are saying is that there wouldn't be any set standards as to whether or not to offer a

[26] person a job after the interview. Is that correct?

A. No. Now I wouldn't know where there are such standards available, if you are speaking of it objectively.

Q. Well, are there subjective standards also?

A. No, our intangibles are personal.

Q. What would they be?

A. My gosh. You could list many. I mentioned some, voice articulation, attitude that the person might

detect towards kids, towards teaching. You could just go on and on, and say that I might see or you might see some things different from me, and you and I are sitting across the table from each other, and you shake hands with each other. You can begin to evaluate things the way you grab a man's hand, tells me something, and from that point on I begin to look at you from a personal point of view.

* * *

[28] Q. Does Hazelwood always prefer a Master's Degree over a Bachelor's Degree?

A. You know that is an interesting point, and the answer to that is "No." We are still, again after you make the entry on the basis of the fact that they are Certificated, that is as far as paper qualifications go. Then it gets to be who they evaluate the best person to fill the position on intangibles.

Q. Would it also be true on experience that there would be no necessary preference for more experience over less experience?

A. Depending on the successfulness of that experience, after we have checked with the previous job. But I don't think after you get into certain intangible areas that six years of experience will get you in the door any faster than two.

Q. Is there any preference given by Hazelwood, to persons referred by District Personnel or residents of the District?

A. As far as I am concerned, not particularly. Now, see there is various—are you talking about interview or hiring?

Q. Well, either.

A. I would hope not.

Q. Is there any preference for students completing their student teaching in Hazelwood?

A. I think we're getting on some areas, that you're on intangibles again. Because you have known—for example, a kid that went to high school, I have known some kids that went to

[29] High School, and I know their background, and I know an awful lot more about them. Again in these intangible areas, and I know somebody who comes in for an interview, on that basis, they could probably get employed, because we know a little more about our products, and we also know that on the basis of a person who has student taught, we have had a better chance to evaluate them on the line. So, I think that my answer would be, if they have been a very successful student teacher, we would employ them, if we had a position, because we know what they could do.

* * *

[58] Q. Now, referring to Mr. Burroughs a few moments ago, do you recall whether there were—well, let me withdraw that and ask you, instead, do you recall when the first black faculty member was employed by Hazelwood?

A. The only thing I can recall, factual, is when it was done in the secondary school and I was involved in that.

Q. When was that?

A. Whenever Mrs. Davis at Hazelwood West was employed. Now, this isn't the first one that was ever offered employment. She was the first one that accepted employment.

Q. How many had been offered employment?

A. I don't know.

[59] Q. You said you didn't recall which particular year she came?

A. No I don't, but she has been here for a few years.

Q. Do you have any idea why no black faculty members were employed prior to her?

A. They either weren't the best qualified candidates for the position in our opinion or they didn't choose to seek employment in this district.

* * *

Q. Do you know where Hazelwood generally gets it's teachers from, what geographic area?

A. Oh, I think, logically, they would come from the schools, the colleges and universities in the somewhat immediate area, but I don't think this is just due to the supply and availability, but we have gotten teachers and get them from everywhere. By that I mean, we get them from a lot of places. Generally, we have them from the state college, what used to be, now I guess it's University. Your in a state college or university district like this area it's pretty well guided between the South East Missouri at the Cape and North East Missouri of Kirksville. The two universities always supply teachers locally. You have

[60] got your other colleges in the area; Lindenwood and Webster.

* * *

[2] CLIFFORD RUSSELL KIRBY, SR.

being first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OLESON:

Q. Will you state your name, address and race, please.

A. Clifford Russell Kirby, Sr., 1001 Cherry Hill Drive,

Sun City Center, Florida My race is Caucasian.

Q. What are you doing at the present time for employment?

A. I am a classroom teacher for the Board of Public Instruction, Hillsborough County, at Ruskin, Florida.

Q. On what date were you first employed by the Hazelwood School District?

A. The exact date I don't remember. It was sometime late in the winter or early spring of 1953. I didn't officially go to work until July 1, 1953.

Q. In what capacity were you first employed?

[3] A. Superintendent of Schools.

Q. And how long did you remain Superintendent?

A. I remained Superintendent of Schools until the last day of June, 1967.

Q. And that is the only position you have held with the Hazelwood School District?

A. That is all.

* * *

[32] Q. In the early days what was the geographic

[33] area from which you generally recruited your teachers?

A. From the St. Louis colleges and universities, the State schools, Central College at Fayette, Lindenwood at St. Charles, and that was it I never went to the east side because I couldn't meet Illinois salaries.

Q. Could you give me all the names?

A. Fontbanne College, St. Louis University Washington University, Harris Teachers College, Southeast Missouri State University, Central Missouri State University and the University of Missouri. This was prior to Mr. Hord's time.

* * *

[36] Q. Did you ever recruit at Lincoln University?

A. I never did recruit at Lincoln University.

Q. For what reason?

A. In the early years of my superintendency that was a Negro university.

* * *

[38] Q. In terms of the changes or anything like that, did you ever advertise for teachers?

A. Yes, sir.

Q. All decisions concerning advertising would generally come across your desk?

A. Yes.

* * *

[59] MR. OLESON: I would like to introduce this as our Exhibit No. 1.

* * *

Q. Would you read the advertisement right here?

A. Yes, I have read it.

Q. Were you aware that this ad was placed on June 17, 1962, in the Clarion Ledger of the

[60] Jackson Daily News?

A. I was aware that we placed ads in several different newspapers in states where we normally did not recruit. I don't recall all of the newspapers. I do recall this one because of this incident here.

Q. Do you recall which other newspapers you put your advertising in?

A. No, I can't.

* * *

MR. ENS: What newspaper was that?

THE WITNESS: Jackson, Mississippi, I think.

MR. ENS: The Clarion Ledger of the Jackson Daily News, Jackson, Mississippi?

BY MR. OLESON:

Q. Would you please read the ad for the purpose of

the record?

THE WITNESS: (Reading) "Teaching

[61] Opprotunity! Kindergarten and Elementary teachers (white only) needed in one of the most rapidly growing, high respected School District in America. School District of Hazelwood is located in suburban area of St. Louis County. Schedule ranges from $4,600 with AB Degree (no experience) to $8,620, depending upon exprience. MA Degrees range to $9,570, with experience. Clifford R. Kirby, Superintendent, the School District of Hazelwood, Box G-Hazelwood (St. Louis County) Mo. Sherwood 1-6404-Area Code 314."

MR. ENS: Is that identified by a date?

THE WITNESS: That is identified as the Clarion Ledger Jackson Daily News, Sunday, June 17, 1962, Section B.

BY MR. OLESON:

Q. Do you recall this advertisement coming across your desk prior to being sent to the newspaper?

A. I am reasonably certain that it did. I suspect that the Public Relations individual handled this. We retained about this time, somewhere along in here, a public relations consultant firm,

[62] and I suspect that he wrote this ad because I see some non-teacher nomencalture in there. I don't think I would have written in that way, but there is certainly something in there that I wouldn't have had if I had sent it out.

Q. What is that?

A. "White only," and I don't believe that he did. In fact, I think the evidence in the record of the school district will show that that "white only" was not prescribed by us. The Civil Rights group in Missouri, the State Commission, has a full record on that.

EXAMINATION

BY MR. BELL:

Q. To what evidence are you referrring?

A. This ad here.

Q. I mean could you describe the evidence you are referring to?

A. Somebody evidently sent this to this group. I probably have their name wrong, the Missouri group, and they wrote me about it. I turned it over to my attorney, Mr. Russell.

Q. You said it came across your desk prior to publication?

A. I am certain it did.

[63] Q. In that form?

A. No, not in that form. I would not send anything out as "white only," not after 1954.

Q. How did the "white only" part get into the ad?

MR. ENS: I will object to this. That calls for speculation and conjecture on the part of the witness.

BY MR. BELL:

Q. Do you know or have any information how that got into the ad?

A. No, I have no information.

Q. Who was your Public Relations Officer?

A. Gregory Franzwa. I don't know for sure that he even wrote that. I don't recall all the circumstances on this.

* * *

[64] Q. This is a deposition taken from Superintendent McDonald at 9:00 o'clock in the morning until 3:00 o'clock in the afternoon on December 2, 1973. I would like to read to you from pages 66 and 67.

"Q. This was a newspaper dated June 17, 1962.

What was your position at that time?

"A. Assistant Superintendent.

"Q. Do you know anything at the time, or shortly thereafter, about the advertisement?

"A. No.

"Q. When did you first hear of the advertisement?

"A. It came to my attention when the school district was contacted by, I believe it was, the Missouri Commission of Human Rights, or some agency like that

"A. Well, has it come to your attention, in the course of your duties with the Hazelwood
[65] School District, that such an advertisement was placed by the Hazelwood School District?

"A. That was placed by the Superintendent's Office."

What would you have to say? He seems to be indicating that it had to have been through the Superintendent's Office. Your own prior testimony indicates that–

MR. ENS: I will object to this. It is improper questioning to have him comment upon the testimony of another witness. Each witness is free to testify as to his best recollection, and it is up to the Judge to decide the qualifications of the witness or the veracity.

BY MR. OLESON:

Q. Was that testimony accurate that I just read to you?

A. Yes.

* * *

[66] A. What was that?

Q. Did you ever advertise for teachers at all other than this advertisement?

A. Oh, yes.

Q. Do you have any idea when and in what newspapers?

A. I don't recall when, but we advertised in the metropolitan newspapers of St. Louis several different times. I don't recall how many or when, but that was common practice in those days.

Q. Did you ever advertise outside of metropolitan St. Louis for teachers?

A. Yes.

* * *

[3] DR. CLARENCE O. McDONALD

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, The United States of America, deposeth and saith

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address, and your race for the record, sir?

A. Clarence O. McDonald, 129 South Barat, Ferguson, Missouri.

Q. What is your race, for the record, sir?

A. Caucasian.

Q. On what date were you first employed by Hazelwood?

A. I began work on September first, I guess it was, in 1953.

Q. In what capacity was that?

A. High School Principal.

Q. And when did you change to another capacity?

A. July 11, 1959.

[4] Q. What position did you assume then?

A. Assistant Superintendent.

Q. How long were you Assistant Superintendent?

A. Until July 1, 1967.

Q. And what was your position after July 1, 1967?

A. Superintendent of Schools.

* * *

[17] Q. Would an applicant have to have an interview with the building principal in order to be employed as a teacher?

A. Yes.

Q. Would the building principals make a recommendation to hire?

A. Yes.

* * *

[18] Q. What instructions have the building principals received as to how to employ teachers?

A. To employ the most competent person available for the particular position they have under question, or to recommend employment for the position.

* * *

[36] Q. Of the applicants interviewed, how does Hazelwood
[37] select which ones are to be hired?

A. Upon the recommendations of the building principals and the coordinators of either elementary education or secondary

Q. And how – what criteria would the building principals and the coordinators use to make that decision?

A. There are no criterion, other than competency for the particular position.

* * *

[40] Q. Has Hazelwood ever developed any written policies or standards for interviewing for employing teachers?

A. No. standards

MR. RUSSELL: What did you say?

THE WITNESS: No. standards.

Q. Any particular reason why the district has not?

A. We described to the philosophy that the person most directly involved, which in this case is the principal, should have the lee-way to employ the most competent people that he knows of or that he can find for the position.

Q. Has Hazelwood ever conducted any analysis of the various teaching jobs to see what qualifications should be required for each one?

A. No.

Q. Has Hazelwood ever conducted any studies to make sure that it's practices, procedures and standards result in the employment of the best qualified teachers.

A. We have no standards, but we have not conducted any studies along this line.

* * *

[65] Q. I hand you a document which I would like to introduce as Government's Deposition Exhibit Number Five.

MR. RUSSELL: Number Five?

MR. BELL: Yes, sir. Which purports to be a Xerox copy of an advertisement and it is of the Clarion Ledger, Jackson Daily News for Sunday June 17, 1962 and specifically referring to an advertisement called teaching opportunity and the advertisement says, Kindergarten and Elementary teachers (white only) needed in one of the most rapidly growing, high respected School Districts in America. School District of Hazelwood is located in suburban area of St. Louis County. Schedule ranges from $4,600 with AB degree (no experience) to $8,620, depending upon experience. MA degrees range to $9,570, with experience. And at the bottom is stated, Clifford R. Kirby, Superintendent in the School District of Hazelwood, Box G - Hazelwood, St. Louis, Missouri. And, I'd like to show you this advertisement and ask you whether

this was an advertisement placed
[66] by the Hazelwood district?

MR. RUSSELL: May I see that please?

MR. BELL: Yes, sir.

Q. Could you tell us whether or not that is an ad that the Hazelwood District placed?

A. I could not.

Q. Do you know how it is that it got into that paper?

A. No, I do not.

Q. Do you have any knowledge at all of that ad or anything concerning it?

A. Only as a result of your inquiry for information.

Q. This was the newspaper – it was dated June 17, '62. What was your position at that time?

A. Assistant Superintendent.

Q. Do you know anything at the time or shortly thereafter about the advertisement?

A. No.

Q. When did you first hear of the advertisement?

A. It came to my attention when the school district was contacted by, I believe it was, Missouri Commission of Human Rights or some agency like that, Missouri Commission on Human Rights.

Q. Well, has it come to your attention in the course of your duties as with the Hazelwood school district that such
[67] an advertisement was placed by the Hazelwood School District?

A. This was placed by the superintendent's office.

* * *

[170] RICHARD NEGRI

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address and race for the record, sir?

A. Richard Negri, 2008 Claudeen Drive, St. Louis, 63118, white.

* * *

A. In 1953 I graduated from Arkansas State College and taught three years at Patton, Missouri, social studies,
[171] seventh through twelfth grades; Hazelwood in '56, social studies, seventh through twelfth grades until 1961. In 1961 director of student activities in Hazelwood Junior High, 1965 assistant principal at Kirby, '67 principal at Kirby.

Q. And that is your present position, correct?

A. Yes.

Q. Could you describe your present duties generally?

A. An instructional leader at Kirby Junior High School.

Q. And you are in charge of all the personnel in that building?

A. Yes.

Q. Who would your superiors be?

A. Mr. Huss, my immediate superior, and then Dr. Lawson and then Dr. McDonald.

Q. Would you describe your present duties with respect to the employment of teachers?

A. I don't understand the question.

Q. Do you have any responsibility with respect to the employment of teachers?

A. Yes, I do.

Q. Would you describe them?

A. We start at the beginning of October, or November, or December with the particular enrollment of the next school year. The department chairmen are aware

of these figures, they

[172] decide how many new teachers they are going to add to the faculty, this is authorized by me, I fill out an employment record for Mr. Huss and turn this in so our needs for the next year–and then from Mr. Huss–he takes these needs and turns them over to Mr. Hord and Mr. Hord at the personnel director's office secures applicants and candidates for the varous positions, then Mr. Huss arranges the dates for us to interview the candidates. The candidates come to the building on the dates and times arranged, then with Mr. Huss they come to the office and they are interviewed by me first, then the assistant principal in charge of a particular department. We have three assistant principals and each one are assigned three different departments. After they talk to the assistant principal in charge of that department they are channeled through the department chairman and the department chairman interviews them and they come back and talk to me.

Q. What happens after that?

A. If they are going to another building they take their application with them. If I am the last principal they have seen that day, there is a possiblity they could go to Hazelwood West, or Hazelwood Junior High and stop at Kirby last. If I am the last they leave the application with me. I consult with the principals and we make our recommendation.

Q. That is a written recommendation?

[173] A. Yes, we put them in the categories we recommend the candidate for the position, we put them on hold, or not recommend for the position and then this is taken to Mr. Huss and the principals meet as a group and go over the application.

Q. Why on hold instead of recommendation?

A. In certain cases we feel another individual more qualified for a position and we feel if this individual does not take the position we could go to the hold position.

Q. So, I take it from what you said, the personnel office, rather than you selects the person to be interviewed, is that correct?

A. Yes.

Q. However, you do interview the teacher applicants?

A. All candidates.

Q. Have your recommendations as to who should be employed always been followed?

A. Yes.

Q. What do the department chairmen do, do they make a recommendation to you in writing?

A. Yes.

Q. You are in the position of reviewing that recommendation?

A. Yes.

Q. Have you ever vetoed a recommendation of a

[174] department chairman?

A. Yes.

Q. What instructions have you received from your superiors with respect to employment?

A. To always try to hire the best qualified person for the position.

Q. Have they explained to you what is meant by best qualified?

A. It's a feeling that a principal has, when he has been in charge of a building, we don't have a barometer to set someone up by.

Q. This would not be something specific they ex-

plained to you?

A. No.

Q. What instructions have you given your subordinates, such as the department chairmen, or the assistant principals?

A. Select the best person for the position.

Q. Have you explained to them how to go about that specifically?

A. Just told them to use their usual common sense.

* * *

[183] Q. What training have you had in interviewing and personnel selection?

A. Taking courses in college and then we have had meetings with the department chairmen and assistant principals and Mr. Huss, work shops, and Mr. Hord and attorney Russell at one time.

Q. What courses does that training include? You were speaking of college courses.

A. Personnel management, educational administration

[184] courses.

Q. What work shops have you had?

A. We have had work shops here in the district, internal work shops.

Q. How many have you attended?

A. All of them.

Q. How many has that been?

A. I can't remember offhand how many.

Q. In your college courses you specifically studied interviewing for faculty positions?

A. Yes.

Q. What are the minimum standards you require for the employment of teachers?

A. Bachelor's Degree and certification by the State of Missouri Department of Education.

Q. Any others?

A. No.

* * *

[157] RICHARD SELBY

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address and race for the record, sir?

A. Richard Selby, 12332 Hudson Road, St. Louis, Missouri, Caucasian.

* * *

[159] A. And I am still principal at the Black Jack Elementary School.

Q. I take it your duties as principal would be to be in charge of the total program at Black Jack?

A. Yes.

Q. And your subordinates would be all the professional personnel there, is that correct?

A. Yes, that is correct.

Q. Do you have any responsibilities with respect to the employment of teachers?

A. Yes.

* * *

[161] Q. Do you interview teacher applicants for positions?

A. Yes.

Q. Is there anyone else in your school that does that with you?

A. Yes, with me, the instructional specialist and the grade chairman, where the position—where the vacancy exists, if the grade chairman is available. I have only done this for the last two years prior to that I did the

interviewing by myself.

Q. And the instructional specialist and grade chairman would only interview with you in your presence?

A. That is right, they do not interview without me being there.

Q. It's your responsibility rather than theirs to make the recommendations as to employment?

A. That is right.

* * *

[165] Q. What are minimum standards that you require for employment in addition to the state certification standards?

A. I don't know, like I say, I have a minimum standards as such that could always be followed.

Q. Are there any particular qualifications that you look for?

[166] A. Yes.

Q. And what are they?

A. My impressions of her ability or his ability to perform the functions of a teacher and that would be based on my impressions in the interview, the recommendations that they list and, of course, the kind of recommendation I get from those people when I contact them.

Q. Do you always contact them prior to offering a position?

A. Most always, yes.

Q. Anything else you look for?

A. Yes, their attitude toward people in general, especially toward children. I am more concerned about the kind of approach, whether it is a humane approach or whether it is a subject matter approach.

Q. How would you define that?

A. There are some teachers that talk about, I am going to teach a subject, and that is it; and there are some that say, I want to work with the children, that

makes two different approaches.

Q. Which of those would you prefer?

A. A teacher that wants to work with children.

* * *

MACK SMYTHE

[4] MR. MACK SMYTHE, after being duly sworn by Mrs. Sue K. Richmond, Notary Public in and for Hinds County, Mississippi, testified as follows:

DIRECT EXAMINATION

BY MR. OLESON:

Q. What is your name and address?

A. My name is Mack, M-a-c-k, S-m-y-t-h-e, Smythe.

Q. What's your address?

A. Business or residence?

Q. Why don't you give us both addresses.

A. My residence is 1126 St. Ann Street; my business address is Mississippi Publishers Corporation, Jackson, Mississippi.

Q. Could you describe your present position and your duties, please?

A. Advertising Director of both newspapers. I direct the Advertising Departments of these newspapers.

Q. Could you name the newspapers, please?

A. Clarion Ledger in the morning; Jackson Daily News, afternoon.

Q. What precisely are your duties?

A. The direction of the Advertising Department, personnel and policies.

Q. How long have you been in this position?

[5] A. Oh, about 25 years.

* * *

[15] Q. Was the "whites only" portion of the advertisement inserted by the newspaper or was it run as sent to you by the Hazlewood School District?

* * *

A. We try to publish copy as presented and never under any circumstance alter copy without the acknowledgement of the sender or originator.

Q. And that is a policy you've always followed?

[16] A. Always followed.

Q. Under no circumstances would you ever deviate from it?

A. No.

* * *

PLAINTIFF'S EXHIBIT NO. 1

Defendant's Exh. #1
Mack Wingfield
5-19-72

B The Clarion-Ledger JACKSON DAILY NEWS
JACKSON 5 Sunday, June 17, 1962

Wanted - Male, Female 48 | Wanted - Male, Female 48

TEACHING OPPORTUNITY!

Kindergarten and Elementary teachers (white only) needed in one of most rapidly growing, high reputed School Districts in Arcadia. School District of Hazelwood is located in suburban area of St. Louis County. Schedule ranges from $4,600 with AB degree (no experience) to $8,620, depending upon experience. MA degrees range to $9,570, with experience.

Clifford R. Kirby, Superintendent
THE SCHOOL DISTRICT OF HAZELWOOD
Box G—Hazelwood (St. Louis County,) Mo.
Sherwood 1-6404—Area Code 314

DEFENDANTS' EXHIBIT A

Dept Exhibit A
Mack Hughes
1-15-74

PROOF OF PUBLICATION

Attached is a clipping of your classified ad which was inserted according to instructions in

Classification [illegible] in Our Issue Of [illegible]

TEACHING OPPORTUNITY!

Kindergarten and Elementary teachers needed in one of most rapidly growing, highly respected School Districts in America. School District of Hazelwood is located in suburban area of St. Louis County. Schedule ranges from $4,600 with AB degree (no experience) to $8,850 depending upon experience. MA degrees range to $9,550, with experience.

Clifford B. Kirby, *Superintendent*

THE SCHOOL DISTRICT OF HAZELWOOD

Box 6—Hazelwood (St. Louis County), Mo.

Sherwood 1-6464—Area Code 314

You may be sure we appreciate your business and look forward to the opportunity of serving you again soon

Walter E. Wood
Mgr. Classified Advertising

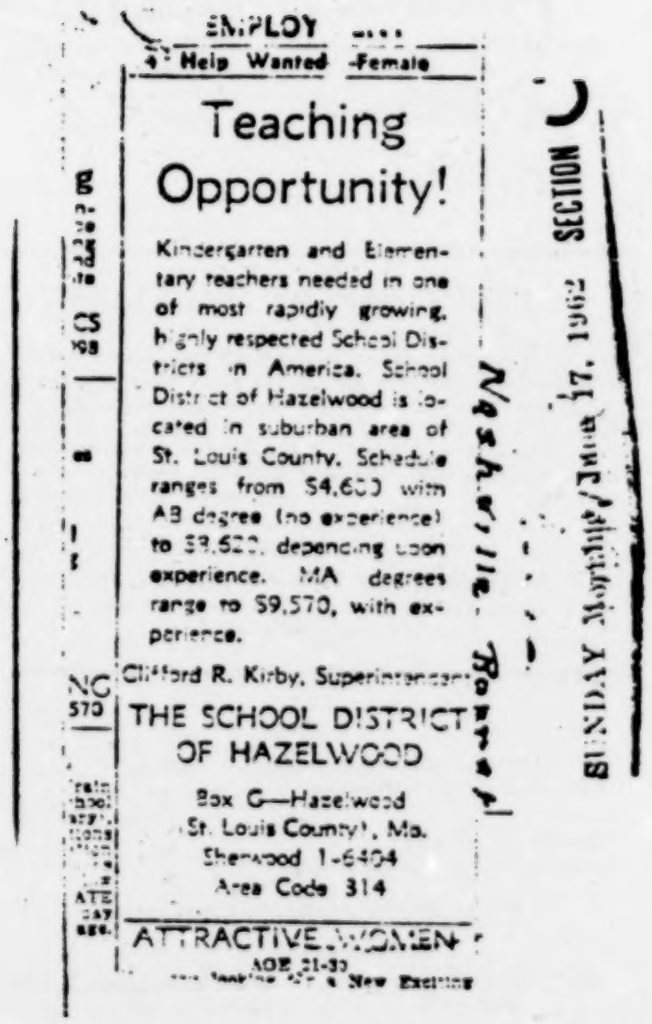
MEMPHIS PUBLISHING CO.
Publishers of
The Commercial Appeal *Morning and Sunday* Memphis Press-Scimitar *Evening*

Form 182-51 7-62

Board of Education
Hazelwood,
Missouri

DEFENDANTS' EXHIBIT C

Exhibit C
3-15-72
Mack Dougan


EMPLOY ....
4 Help Wanted -Female

Teaching Opportunity!

Kindergarten and Elementary teachers needed in one of most rapidly growing, highly respected School Districts in America. School District of Hazelwood is located in suburban area of St. Louis County. Schedule ranges from $4,600 with AB degree (no experience) to $9,620, depending upon experience. MA degrees range to $9,570, with experience.

Clifford R. Kirby, Superintendent

THE SCHOOL DISTRICT OF HAZELWOOD

Box G—Hazelwood
St. Louis County, Mo.
Sherwood 1-6404
Area Code 314

ATTRACTIVE WOMEN
AGE 21-33

Nashville Banner
SUNDAY Morning/June 17, 1962 SECTION

[4] EMMETT SUTTON

MR. EMMETT SUTTON, after being duly sworn by Mrs. Sue K. Richmond, Notary Public in and for Hinds County, Mississippi, testified as follows:

DIRECT EXAMINATION

BY MR. OLESON:

Q. Would you give us your name, your business address and your home address, please?

A. Emmett C. Sutton, 3761 Northview Drive, Clarion Ledger – Jackson Daily News, 311 East Pearl.

Q. Would you please describe your present position and duties?

A. Classified Advertising Manager of the Classified Department for both papers, morning and evening edition.

Q. How long have you been in this position?

A. Approximately 25 years.

Q. Would you describe your duties in 1962 regarding classified advertising?

A. Handling advertisements over the telephone, through the mail, through the front counter, and whatever.

* * *

[8] Q. Was this advertisement run in the same words as it was received from the Hazelwood School District?

* * *

A. I wouldn't know whether that is the exact one or not. I'm reading just what's in the paper.

Q. As a matter of the policy of the newspaper, would you ever have changed an advertisement yourself?

A. No.

* * *

[9] Q. Was the policy of the newspaper always to print advertising in the exact words in which it was received?

* * *

A. We make no changes in the copy.

* * *

[11] Q. Was that advertisement placed as it was received?

* * *

I object to that as calling for a conclusion.

A. As far as I know. I wouldn't know.

* * *

[3] RAYMOND WEAVER

of lawful age, being produced, sworn and examined in behalf of the Plaintiff, United States of America, deposeth and saith:

DIRECT EXAMINATION

BY MR. BELL:

Q. Would you state your name, address and race for the record, sir?

A. Raymond Weaver, white, 10317 Lilac Drive, St. Louis 63037, Missouri.

* * *

[4] Q. In what capacity did you first come to Hazelwood?

A. As a teacher, sixth grade.

Q. What positions did you hold after the sixth grade position?

A. Principal.

[5] Q. And what year did you become principal?

A. 1962.

Q. Of what school?

A. Charbonier.

Q. Is that your present position?

A. Yes, sir.

* * *

[7] Q. Do you recall ever interviewing any black applicants

[8] for professional positions?

A. Yes, sir.

Q. Could you give me their names?

Q. I am not certain what their name is, one I think is

Ellis.

Q. Would that be Beverly Ellis?

A. I don't know what her given name, Christian name is.

Q. Any others that you can recall?

A. No, not their names.

Q. I would like to show you some names on page 12 and at appendix one of the Government's answers to defendant's interrogatories and ask you whether you have seen any of these names before and if so if you would tell me which names you have seen before and when you first saw them. First of all, the names on page 12.

A. I don't recall those people.

Q. You are referring to page 12? Is that correct?

A. Right.

Q. Would you look at the four pages of appendix one?

A. I do not recall for sure whether this was the Ellis that I am speaking of or not. I just don't recall.

Q. You are referring to Beverly Ellis on the first page of appendix one, is that correct?

A. I am not sure of her name, but it seems to me I did

[9] interview her. My office was broken into and my records were all messed up and destroyed. I had a problem there. Well, I may have seen –

MR. RUSSELL: There are four pages of that.

A. Oh, there is four pages. I recall interviewing two people and two colored people is all I ever recall. One was under contract at the time.

Q. Do you recall whether that was Beverly Ellis?

A. No, I don't recall. No, it wasn't. She was working for the City of St. Louis whenever I – As I recall at that time.

Q. When you interviewed the applicant whose last name was Ellis, was that for the '72 - '73 school year?

A. I don't recall, I don't recall.

Q. With respect to the person you are speaking of, did you recommend her for employment?

A. No, I didn't.

Q. For what reasons?

A. She just didn't fit any of the descriptions. And, her records in St. Louis – she taught at different schools each year most of the time.

Q. And how many different schools do you recall?

A. I don't recall.

Q. Have you ever had occasion to hire anyone who has

[10] taught at a number of different schools before?

A. I don't recall. I assume that I have had the chance, but I don't recall anyone.

Q. Any other reasons, excuse me.

A. Go ahead, I am just trying to think.

Q. Are there any other reasons you can point to that you did not recommend the applicant named Ellis that you are referring to for employment?

A. Well, I asked her all kinds of questions about the teaching situation and she didn't respond to the questions. She was very slow in responding to anything and I tried to get her to respond to different types of leading questions.

Q. Do you have any ideas of the types of questions you are talking about?

Q. Well, the type of classroom that she conducted pertaining to discipline, anything along these lines. Whether she could inspire children or not, whether she was creative in her teaching and such as that.

Q. What qualifications do you believe a teacher should have to be employed?

A. Well, honesty and vitality, good health, she should have an ability to inspire children, character strong, will-

ing to accept criticism, constructive criticism and be part of the total working force for the betterment of children.

[11] Q. Any others that you can think of?

A. Oh, there is many others. I am always willing for – but those are the very foremost ones, especially in the inspiration of the children and leadership of children.

Q. These are things that you attempt to measure during the personal interview of the applicant?

A. Those are some of the things.

* * *

C. Testimony at Trial

[108] ROBERT W. HOWELL

called as a witness for the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

[109] QUESTIONS BY MR. BELL:

Q. Would you state your name for the record, sir?

A. Robert W. Howell. My name is Robert W. Howell.

Q. And your address?

A. 898 Alanson Drive, University City, Missouri.

Q. What is your race?

A. Black American.

Q. Did you ever apply to the Hazelwood School District for a teaching position?

A. Yes, I did.

Q. I would like to show you Plaintiff's Exhibit No. 21 and ask you to review that and tell me whether it is a copy of your application to the Hazelwood School District?

A. Yes, it is. This is the second one.

Q. Is the information in the application correct?

A. Yes.

Q. Did you ever file any other applications other than that one with the Hazelwood School District?

A. Yes, my first application was in 1971, right at the end of my teaching at Hazelwood Senior High School.

Q. What time of the year was that?

A. May, May '71.

Q. Were you ever offered a teaching position by the Hazelwood School District after you filed your application, that is, after either of your applications?

[110] A. Not directly, no. After the first one, I was more or less led to believe, if an opening was available in the field of social studies that I would be greatly considered because certain individuals liked the way I handled students, like the rapport that I established with the students during the February term.

MR. ENS: I object. These statements are self-serving.

THE COURT: Sustained, unless you establish who said it.

Q. (BY MR. BELL) Who said that?

A. The first one was my co-operator, my co-operating teacher, Mr. Frank Waddell, W-a-d-d-e-l-l, Frank Waddell.

Q. And who else told you these things?

A. I believe I spoke with Mr. Salada out there.

Q. Spell that.

A. I believe he spells it S-a-l-a-d-a, but I am not too sure about the way he spells his name.

Q. Were you ever offered a teaching position by the Hazelwood School District?

A. No.

Q. Did you receive any scholarship or awards while you were in college?

A. Yes.

MR. RUSSELL: I object to that as immaterial.

THE COURT: Overruled.

THE WITNESS: I received a two thousand dollar scholarship from the Missouri Law Enforcement Assistance

[111] Council.

Q. (BY MR. BELL) Why were you given that scholarship?

MR. ENS: I object to that as immaterial.

THE COURT: Oh, I will let him answer unless somebody was told about it, then it would be hearsay, but if it will save time, let him answer.

THE WITNESS: I was chosen from the economics department to do a study of the Missouri field in the juvenile justice system, in the St. Louis County area. I was chosen from a wide variety of people in the University of Missouri at St. Louis.

Q. Was that based on your academic accomplishment?

A. Grades in economics.

THE COURT: Is that grades and economics or grades in economics?

THE WITNESS: Grades in economics.

Q. (BY MR. BELL) Did you ever communicate the fact of that scholarship to the Hazelwood School District?

A. Yes, they knew it.

Q. Do you recall whom you communicated it to?

A. Just about everyone that I came in contact with.

THE COURT: Mr. Witness, I am sitting within three feet of you and I cannot understand what you're saying. You are mumbling.

[112] THE WITNESS: I told everyone I spoke with at the school in regard to their showing an interest in me, like the person I mentioned before, Mr. Salada, and especially Mr. Waddell.

Q. (BY MR. BELL) You previously said you did your student teaching in the Hazelwood School District. At which school?

A. The senior high. At that time it was just one building.

Q. Do you recall whether there were any other black

student teachers there when you were doing your student teaching?

A. Not to my knowledge. I didn't see any.

Q. Have you taken any additional courses beyond your Bachelor's degree?

A. Yes, in May I will have twenty-one hours on my Master's degree at Webster College.

Q. When did you begin taking those courses?

A. I started in September of '71 and I was taking one course a semester.

Q. After your first application in 1971, were you ever offered an interview by the Hazelwood School District?

A. No.

Q. After your first application in 1971, did you receive any correspondence from the Hazelwood School District?

[113] A. Yes, I believe it was in October, they sent me a letter saying that there was no openings in the field of social studies, for which I had applied, and later on in December they sent me another letter stating that if I wished to renew my application the following January I could do so and if I did not do so, the application would be destroyed.

Q. After your second application to the Hazelwood School District in March 1973, were you offered an interview by the Hazelwood School District?

A. No, I wasn't offered an exact interview. The only reason I applied the second time, I was talking with my ex-cooperating teacher and he told me to go on and apply again and with that suggestion, I applied again and he said he knew there were going to be openings in the social studies department for that September.

Q. Did he tell you how many openings?

A. No, not exactly. I didn't find that out until I

returned the application in person and later on I was told by John Wright, who at that time was a department head, stating that there was exactly four or more openings.

Q. Following your application to the Hazelwood School District, what has been your employment?

A. I have been employed by the St. Louis Board of Education since September 1971 to the present.

MR. BELL: No further questions.

* * *

[114] CROSS EXAMINATION

Q. Is it not true, that in the field of teaching, social studies probably has more applicants than any other field?

MR. BELL: I don't know whether the witness knows that.

MR. ENS: I asked him if he knows.

THE WITNESS: I am told that that is a generally accepted statement every place.

Q. (BY MR. ENS) Every place?

A. Yes.

Q. Have you made any applications at any other schools other than Hazelwood?

A. Yes.

Q. Where?

A. I made one in Normandy and one in Ladue and another one, I think it was Jennings, I applied there also, I think, I am not too sure but basically, the first one was Hazelwood and I knew that school because that was where I had

[115] gotten my training, that was where I taught, where I had done my student teaching. I felt because I had done my student teaching there I would be known, otherwise I would be a name on an application.

Q. Were you employed by any of these other districts?

A. No.

Q. By whom were you employed?

A. When?

Q. At any time after you made this application?

A. Just the St. Louis Board of Education from '71 to the present.

Q. Is that the reason for the little tag you wear?

A. Yes, it is an ID badge.

Q. That is what they are using in the St. Louis school system?

A. Yes.

Q. You are still employed by them?

A. Yes.

* * *

[153] CYNTHIA EDMOND

called as a witness for the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION

[154] QUESTIONS BY MR. OLESON:

Q. Would you give your name and address, please?

A. Cynthia Edmond, 1735 Chiquita Terrace.

Q. What is your race?

A. Black.

Q. Did you ever apply to the Hazelwood School District for a faculty position?

A. Yes, I did.

Q. Would you look at Government's Exhibit No. 11 and identify it, please?

A. It is my application.

Q. Is the information on it correct?

A. Yes.

Q. Were you ever offered a position by the Hazelwood School District?

A. No.

Q. What kind of Missouri certificate do you have?

A. Life.

Q. In what areas and what grades are you certified?

A. Social studies, seven through twelve.

Q. What was your grade point average at Valley State?

A. Two nine.

Q. Out of what?

A. Four.

Q. What was your average in your major?

A. Three point three.

Q. Why did you apply at Hazelwood?

A. I was living in the area and I wanted to teach

[155] in that area. We only had one car and that was my only transportation in that area.

MR. RUSSELL: We don't even know what she is talking about. We can't hear her at all.

THE COURT: Speak up. These gentlemen have to hear you.

THE WITNESS: I was living in Hazelwood. We only had one car and that was my only transportation for getting to work.

Q. After you returned your application to Hazelwood, what happened?

A. I received a letter telling me to up date my file if I wanted to remain on the list, if I wanted my application to remain on file, and later in July of last year I went down to the Board and the receptionist sent me to a lady in the back, I don't know her name, but she told me that she couldn't tell me if there was a possibility that I would be hired because there were approximately five hundred teachers on the waiting list.

Q. Did you renew your application?

A. Yes, I did.

Q. Did you have any further contact with the Hazelwood School District?

A. I got a letter from them in December, telling me to

make sure my file was up to date because they were going
[156] to or they were getting ready to interview for the next school term.

Q. How did you respond to that?

A. I sent a letter back and making sure that all my certification, my certificates and things were in.

MR. OLESON: I have no further questions.

CROSS EXAMINATION

QUESTIONS BY MR. RUSSELL:

* * *

Q. It is not dated?

A. No.

Q. The date shows at the end of your application as July 10th, 1972, isn't that correct?

A. Yes.

Q. That is the first application that you made?

A. Right.

Q. And that was during the summer vacation and positions for the ensuing year might have been filled at that time?

A. Yes.

Q. Did you understand that?

A. Yes.

Q. You understood there were no vacancies available?

A. Yes.

Q. But the district did get in touch with you and ask you to keep your application alive so that you could be
[157] interviewed at some future time?

A. Right.

Q. And your major is in social studies?

A. Right.

Q. But at the time you applied and at the time they got in touch with you the second time to keep it alive there were no positions available and you understood that?

A. Right.

* * *

[209] WILLIE J. PALMER

called as a witness for the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. BELL:

Q. Would you state your name, please?

A. Willie J. Palmer.

Q. Your address.

A. 5201 Northwood Drive, St. Louis, Missouri.

Q. And your race?

A. Black.

Q. Did you ever apply to the Hazelwood School District for a teaching position?

A. Yes, I did.

Q. I would like to show you Plaintiff's Exhibit 31 and ask you to identify it, please.

A. Yes, sir.

Q. Is that a copy of your application?

A. Yes, it is.

Q. Were you ever offered a faculty or staff position by the Hazelwood School District?

A. No, sir, I was not.

Q. Your application indicates that you attended Stowe Teachers College from 1946 through 1950, is that correct?

A. That is correct.

Q. What was the racial composition of Stowe Teachers College when you were in attendance there?

[210] A. All black.

Q. Where was Stowe College located at that time?

A. In the City of St. Louis, at Pendleton and Cottage.

Q. Does it still exist as a school?

A. No, it does not.

Q. What happened?

A. In 1954 the Supreme Court decision outlawed integration supposedly and Harris became part of Stowe.

THE COURT: Or Stowe became a part of Harris?

THE WITNESS: Yes, Stowe became a part of Harris.

Q. (BY MR. BELL) Have you taken any additional academic courses following your graduation but prior to your application to the Hazelwood School District which are not all included in your application?

A. Yes, sir, I have.

Q. Will you describe some of those?

A. In 1965 I attended Southern Illinois University at Carbondale, taking up geography, political, and in 1966 during the fall semester I was at SIU at Edwardsville taking up tested measurements and modern math; also in 1966 I went to Carleton College in Northfield, Minnesota, where I took up geology and astronomy, and starting in 1967, through the National Science Foundation, I received a grant for the University of North Dakota at Grand Forks, North Dakota,

[211] taking up chemistry, biology, physics, geology, and calculus and in 1968 back to SIU taking courses in reading and also, taking reading certification for the State of Missouri through Harris Teachers College and in 1969 back at SIU taking up courses in mass communication and in 1971 Rochester State Junior College at Rochester, Minnesota, taking courses in mass communication and in 1971 taking up technical writing through an extension college course of the University of Minnesota, and in 1972 attending Chicago State University taking up courses in statistics.

Q. Do you recall what documents you forwarded to the Hazelwood School District? Are they all included in the application file or are there others?

A. Other than the letter I sent, I sent along a letter telling my reasons for applying and the reasons why I wanted

to come back to St. Louis and they are not here.

Q. Did you receive any grants or scholarships for any of your post degree education?

A. Yes, I received three grants, one from SIU in 1966 and one from Carleton College in Northfield, Minnesota – I received one from Carbondale in '66 – no, I think it was SIU at Carbondale in '65 and Carleton College in Northfield in '66. I think that is right, SIU at Carbondale in '65 and '66 Carleton College in Northfield, Minnesota, and '67 I spent the academic year at the University of North Dakota, '67 and '68.

[212] Q. Did you receive a grant to attend the University of North Dakota?

A. Yes, from the National Science Foundation.

Q. What other employment experience have you had outside the field of education? Have you had any professional experience?

A. Yes. In 1971, I think it was, I decided to go into the business world and I started working for IBM at Rochester, Minnesota, as an external communications specialist, editing papers for external use, outside the company, and for general conferences, co-ordinating programs on a plant wide basis, devising visual aid communications and aids to help authors write papers and special assignments in community relations. I attended classes within the plant that gave insight into the industrial world and I also had slides prepared for speakers who made external presentations. IBM has a subsidiary, which is SRA, that is, Science Research Associates, located in Chicago at 2525 East Erie, and having been in the field of education, I transferred laterally from Rochester to Chicago, Illinois, and while there, I was a co-ordinator of equating studies for pre-test of the products and I directed random sampling of all possible mixes throughout the units. I also

edited copies, or rather publications at that time and I wrote items for diagnostic tests for reading, research reading materials, and basic tests to be used in professional literature

[213] or awareness tests. These were some of my duties. I also wrote the manual for the administration of these tests while there.

THE COURT: How far did you go in the field of education? In other words, what degrees do you have?

THE WITNESS: I have a Bachelor of Arts. I didn't believe in a Master's degree. I believe in specializing in the field in which I could help kids and that applies to whatever field I have worked in and I feel I have gotten as much expertise in that field as possible while I was in it.

Q. (BY MR. BELL) Were you ever offered an interview by the Hazelwood School District?

A. No.

THE COURT: Let me ask you one question. What are you certified to teach in Missouri? What is your certification?

THE WITNESS: Well, I have had three certifications, three certificates. I have the following certifications, elementary, that is, grades K through 8; math 7 through 9; social studies 7 through 9; reading studies 1 through 12; English 1 through 12, and curriculum 7 through 9.

Q. (BY MR. BELL) Since you applied to Hazelwood, what has been your employment?

A. University City High School, as a reading specialist.

MR. BELL: Thank you. No further questions.

[214] CROSS EXAMINATION

QUESTIONS BY MR. RUSSELL:

Q. Mr. Palmer, you have quite a history, at least as you have given it to us. You do not have a Master's degree – or do you have a Master's degree?

A. No, I do not.

Q. Do you know that you cannot be certified as an administrator without a Master's degree?

A. I do not know.

Q. If I would say to you that that was required by the State of Missouri, then you would not qualify for an administrative position?

A. If the State requires a Master's, I would not, no.

* * *

[215] Q. Then you had the Enright reading clinic from '69 to '70, one year, and your salary was eleven thousand two hundred dollars, is that correct?

A. Approximately.

Q. Did you know the salary schedule in the Hazelwood School District at this time?

A. I believe I did.

Q. Did you know that the salary schedule for a person

[331] of your qualifications was nine thousand four hundred and fifty dollars?

A. No, I did not.

Q. Now from 1970 what did you do?

A. (No response)

Q. Did you teach any place? I am only referring to teaching. Are you teaching now?

A. Yes.

Q. Where?

A. University City High School.

Q. How long have you been there?

A. Two years.

Q. What subject are you teaching?

A. Reading.

* * *

[327] RUFUS YOUNG, JR.,

called as a witness for the plaintiff, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. KEELING:

[328] Q. Would you state your name and address for the record?

A. Rufus Young, Junior, address, 901 Shandel Drive, University City, Missouri.

Q. Where are you employed?

A. By the St. Louis Board of Education.

Q. In what capacity?

A. Director of Personnel.

* * *

[330] Q. What are your responsibilities?

A. My responsibility is for staffing the schools and all other positions, certificated or non-certificated, substitutes, report keeping and all that has to do with personnel.

Q. Does that include the employment of teachers?

A. The employment of teachers, administrators, plumbers and painters, testing and oral examinations and recruiting and all that goes along with that.

Q. From what sources does the St. Louis City schools obtain applications for employment?

A. Sources?

Q. Yes.

A. Well, there are several ways. Of course, when we receive applications, many will walk right in and we call those walk-ins. There will be others that will call and request applications by telephone and then we have a recruiter who

[311] will go out into the field.

Q. Do you know what percentage of your applications you obtain through the recruitment of teachers?

A. The percentage of applications through recruitment will be in the neighborhood of thirty-five or forty-five per cent, no, I think it would be more like thirty-five or forty

per cent.

Q. How is your office set up for recruiting teachers?

A. I have a full time recruiter whose sole job is for recruitment the whole year round and there are times during the year when he needs assistance and we may use assistant principals or any of the other supervisors in the specialized areas and we will send them into various colleges and universities and the program in terms of hiring, the practice in our system with five districts, is that the teachers are requisitioned.

Q. Requisitioned by whom?

A. By the district superintendent or the assistant superintendent in charge or by supportive services which takes in art, music, physical ed, counselling, and guidance, and so forth.

Q. They let you know how many teachers they need?

A. Yes and their need is based upon the budget provided by the Board of Education, and then as their requirements occur, opening or closing classrooms, they request, through my office, their need and we attempt to supply the

[332] need based upon whatever it happens to be.

Q. What is the reason that the St. Louis system has a recruitment program? Do you not get enough applicants without recruiting?

A. We get enough applications without recruiting in most areas. The major reason, I think, for recruitment is now, of course, and in the past, too, is for greater selectivity. We have an opportunity, rarely utilized in the past, because of conditions governing employment, to be selective. That is not solely the reason. You have an opportunity to interview the applicants at close hand. We have applications from those who come in and as they come in, if they walk in, they are interviewed on the spot. That is not always possible but if they tele-

phone in, they ask for an application and you don't know what you're going to get. Our first objective is to get the best possible but if they telephone in and they ask for an application, you don't know. We also have a staff balance and that is possible through interviews. We try to keep within reason ranges of racial balance. Basically, those are the two reasons for recruitment.

Q. Obtaining the best possible and keeping a racial balance?

A. Yes.

Q. You say you have a staff balance problem and you try to keep within a certain range on races?

A. Yes.

[333] THE COURT: Tell me what the percentages are.

THE WITNESS: The percentage in our system, in terms of race –

THE COURT: What do you try to keep?

THE WITNESS: We have at this time about fifty-one per cent black. It is usually about fifty-fifty and that is generally what they have had over the past few years. The Board of Education has adopted a formal staff balance policy but in that staff balance policy there is a specific percentage that is stipulated but we try to keep within the range of what appears to be the correct figure and fifty-fifty is what I have been operating under and my recruiter in making arrangements for recruitment and in selecting colleges would operate along that line of about fifty-fifty.

THE COURT: Do you have any basis for the fifty-fifty figure that you use for that? Is that about the basis of the population?

THE WITNESS: No. We have discussed the various potentials and possibilities and whether it ought to be

based upon the City black-white ratio or the number of pupils in the school system ratio or the present number of teachers and at this point we have no definitive percentage and we are using fifty-fifty and it seems reasonable.

THE COURT: Thank you very much.

* * *

[346] QUESTIONS BY MR. ENS:

Q. In your selection of teachers, what do you try to achieve?

A. Competency first.

Q. Do you try to select the best possible teacher for the position that is vacant?

A. Yes.

Q. What non-discriminatory standards do you use in selecting those teachers?

A. Well – You said non-discriminatory. We do discriminate in terms of competency, that is, we discriminate

[347] against those that were the least competent. We will accept applications with transcripts. I will tell you how we go about it. As those applications arrive, transcripts and references and everything that would go into making a judgment, we will have a specialist in the area, black and white, we usually try to pair supervisors and they will go through the transcript, they will go through the recruiter's remarks in terms of this better view and they will take into consideration the national teacher examination scores and that will give them some input as to the caliber of this applicant and they will rank them as excellent, outstanding, average, below average and they will –

THE COURT: If they are outstanding they are above average? They are first excellent, then outstanding, then average and then below average?

THE WITNESS: Yes.

THE COURT: If they are outstanding, they are above average and if they are excellent they are above outstanding and then they are average and below average?

THE WITNESS: Yes, based on the areas that I mentioned.

THE COURT: Excellent, outstanding, above average, average, and below average?

THE WITNESS: Yes. Then they will give them an overall writing, as these two individuals decide andwho have the competency to make the judgment, based on the data available and they will place them in one of those categories and these

[348] applications are filed and one them is placed a card in color which denotes the rating in terms of excellent, outstanding, above average, average, and so on and when the requisition comes in from the superintendent for a subject in that area, then we go into the excellent or outstanding color area for that subject area and if there is a need, they will requisition whether they need black or white at this point to enhance their staff balance and we will not sacrifice competency for the sake of staff balance but where there are individuals in that same competency range that would enhance staff balance, that person would be placed. I don't know whether that is discriminating against all the other or not.

THE COURT: You mean you haven't heard from any sources about that?

THE WITNESS: Well, not yet. We also notify candidates, that is, those that fall below average or unaccceptable, we notify them that they are no longer being considered but many times we have to get into the critical areas, we get into the average because that is all that is available.

Q. (BY MR. ENS) Do you consider, one, the level of certification in hiring?

A. Say that again.

Q. Do you consider the level of certification that a person has in hiring?

A. Yes, we consider the certification of the person.

[349] Q. Do you consider the years of teaching that a person has?

A. Yes.

Q. Do you consider the highest degree that the person holds?

A. Oh, yes, that is all a part of this input.

Q. Do you consider those in relation to the positions applied for?

A. Yes.

Q. Do you then stop there, when you have reached that point and you have compared those things or do you go further with a person who is being interviewed to try and determine whether or not one person has certain intangible assets or characteristics that might make you prefer him over another person?

A. Yes, we do.

THE COURT: Let me ask you a question. That would have to be based on an interview?

THE WITNESS: Yes.

THE COURT: But you haven't indicated an interview?

THE WITNESS: Once they are requisitioned in the areas you described, in terms of degrees and experience and all the other kinds of things that would make up the total person, then these names of the top candidates that would fit the requisition are returned to that district office and that district office would be furnished with several names for that one position, of the top candidates. Then that district superintendent, his district assistants, principals or whatever

[350] he sees fit to use as the interviewer, interviews the applicants for the position and after that they will make the selection from that group.

* * *

FOR PERSONNEL OFFICE USE ONLY
Received
Acknowledged
Req. Credentials
Set Interview
Interview Date
Action

HAZELWOOD SCHOOL DISTRICT
15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT
Date 5-7-
Assignment
Building
Salary
Signature

I. PERSONAL

Date February 16, 1973

Soc. Security No. 492-52-7779

Mr. Bonner, (Last Name) Terry (First Name) Glen (Middle Name)

Present address 1102 Murcia (Street) St. Louis, (City) Missouri (State) 63138 (Zip Code) 741-3674 (Tele. No.)

Permanent address Same as above (Street) (City) (State) (Zip Code) (Tele. No.)

Position desired:

Elementary Level (Grade) (List in Priority)

Junior or Senior High School All Social Studies courses; (Subjects) Psychology, Sociology, (other) Political Science, Geogra...

Other Positions

Date of Birth June 25, 1947 Height 6'2" Weight 180 lb

Married Engaged No. of Children Wife or Husband, living? Divorced

Separated Number of persons wholly dependent upon you for support None

Physical Defects (a) Sight None (b) Hearing None (c) Other Defects None

Condition of health for past two years Excellent

With what Community Organizations are you associated? None

In what recreations do you engage? Outdoor Tennis, Running, Golf, Baseball, Handball, Football,

Indoor Reading, Oil Painting, Woodworking, Basketball, Volleyball

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? Explorer Scouts, Young Life

Are you left handed? or right handed? Yes

Would you arrange for a personal interview? Yes

Military Status Veteran

II. EDUCATION AND PROFESSIONAL TRAINING

High School Hazelwood Senior High School Address 15575 New Halls Ferry Rd. Total Units ____

Diploma Yes Yes No ____ Dates of Attendance 1962-1965

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. in Major	Sem. Hrs. in Educ.	Total Credits
U. of Mo.-St. Louis	65-66	None	Liberal Arts			32
Florissant Valley						
Community College	69-70	None	Liberal Arts	9		31
U. of Mo.-St. Louis	71-73	B.S.	Soc. Studies-Psych.	55	18	90

Grand Total Credits 123

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes [X] No [ ]

Elem. 2 Yr. [ ] Life [ ] Secondary 2 Yr. [ ] Life [X] K-12 Life [ ]

If not, have you applied for a Missouri Teacher's Certificate? Yes [ ] No [ ]

List any other teaching certificates you may hold and give State None

Have you ever had a teaching certificate revoked? No If so, explain with attached statement.

Give last date in school May 1973 Do you plan to continue graduate work? Yes

If so, in what field? Social Studies Place University of Missouri-St. Louis

Date Available for employment June 4, 1973

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
U.S. Army	[illegible]	'66-'69	3		$600 per month
Hazelwood District-substitute	9-12	'72-'73	5 mos.		$20 per day

Total years experience in Elementary Schools? None Junior High School? substituted 1 semester

Senior High School? 1 semester. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 11 & 12 Subject Area (if applicable) Social Psychology

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at your earliest convenience to Personnel Office.

BEST COPY AVAILABLE

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? No

If yes, explain with attached statement.

Why do you wish to leave your present position? or
Why do you wish to return to teaching? N.A.

Why do you wish to teach here? As I am a graduate of Hazelwood and a resident of the [illegible], I am familiar with the school system and find that its philosophy of education coincides with my own.

What salary are you receiving now? _____ What salary do you expect to receive here? $7[illegible]

VI. PROFESSIONAL GROWTH

What professional magazines do you read? Psychology Today; National Council for the Social Studies Periodical; American Psychologist; Learning

What books have you read during the past year? Six Basics and Tactics in Secondary School Teaching, Competent to Counsel, Future Schock; Tests and Measurements in Psychology, Bury My Heart at Wounded Knee, I'm Okay, You're Okay.

Of what professional organizations are you a member? None

What professional recognition have you had? None

Extent of travel Have visited 32 states and Canada

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? None

Applicant's comment concerning the retention of children in primary grades N.A.

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Tennis, Cross-Country, Track, Intramural Sports, Future Teachers of American, Christian organizations, Student Council, Social activities

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction College courses, U.S. Army, Substitute teaching

Audio Visual Aids Training: University and Army Experience: Substitute and student teac.

Programmed Instruction Training at University and Substitute teaching.

Initial Teaching Alphabet (ita) N.A.

Behavioral (measurable) Objectives Training: University Experience: Substitute and student teac.

SECTION IX., CONT.

Differentiated Staffing: Training: University

Modern Mathematics: None

Ability Grouping (Reading): None

Team Teaching: Experience: Substitute and Student Teaching

Non-Graded: Experience: Army

Group Guidance: Experience: Army, Substitute and Student Teaching

Supervised Study: Experience: Army, Substitute and Student Teaching

Please comment on any other special training and/or experience(s) which you have had.

Military Instruction Schools: Ft. Sill, Oklahoma, Ft. Leonard Wood, Missouri

Training Officer and Company Commander of Advanced Engineering Training Unit

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X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Carl Walther	15[illegible] New Halls Ferry	Teacher
[illegible] Zechmeier	[illegible]	Principal
Victor Bardani	15875 New Halls Ferry	Department Chairman
Richard Hitt	15875 New Halls Ferry	Teacher
Donald J. Wiese	12127 Bellefountain	Insurance Agent

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All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief.

DATE February 22, 1973 SIGNATURE [signature]

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION FORM

Name of Applicant Terry Barner Date of Interview 5-2

Highest Degree Held B.S College or University UMSL

Interview for Family Rel (Subject) position at Sr. High (Name of School)

Indicate Below your rating of the applicant by placing a check mark in the appropriate space:

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area		✓		Psy. major - Counseling Exp. in Army
2. Technical knowledge of learning processes and conditions		✓		Learning method class - comprehensive + child centered
3. Knowledge, understanding, and appreciation of children		✓		
4. Skill in expression		✓		
5. Personal appearance and grooming		✓		
6. Poise, self-control, confidence		✓		
7. Attitude and sincerity toward teaching profession		✓		
8. Sense of humor		✓		

Additional comment or evaluation statement:

Recommended ☑ Not recommended for employment ☐ Held for future consideration ☐

Position Family Relations Years of Creditable Experience 0

FOR CENTRAL OFFICE USE ONLY

☒ Contact for employment to begin on 9-1-73 (Date)

(Signature)

J. Barnes (Department Chairman)

Raymond J. Tryon (Principal)

354 Bolin (Director of Secondary Education)

(Superintendent)

UNIVERSITY OF MISSOURI

DIRECTOR OF ADMISSIONS
AT ST. LOUIS

Roemer, Terry Glen (NAME OF STUDENT) — Theodore J. Roemer (PARENT OR GUARDIAN)

1102 Murcia Dr., St. Louis, Missouri 63138 (PERMANENT ADDRESS) — (ADDRESS)

PROBATION (SCHL) ☐ — DATE OF BIRTH 6-25-1947 — PLACE OF BIRTH St. Louis, Missouri

ENTRANCE CREDITS

ADMITTED TO DAY DIVISION — DATE Oct. 1965
CREDITS FROM Hazelwood High School, St. Louis, Missouri — CONDITION — GRAD June 1965

ENGLISH	4	MATH ANALYSIS	1/2	LATIN	
GENERAL MATH		SOCIAL STUDIES	2.5	FRENCH	
ALGEBRA	1	GENERAL SCIENCE		SPANISH	1
PLANE GEOMETRY	1	BIOLOGY	1	GERMAN	
SOLID GEOMETRY		CHEMISTRY	1	OTHER	5
TRIGONOMETRY	1/2	PHYSICS	1		

ADMITTED TO SCHOOL OF EDUCATION DATE August 1971

ADMITTED TO — DATE

ADMITTED TO — DATE

DEGREE

DATE

UNIVERSITY CREDITS

GRADING SYSTEM CODE — ABCDF 6-DELAYED, 8-EXCUSED — MIL. — P. E. —

STUDENT NUMBER	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS	GRADE	CREDIT HOURS GRANTED	REMARKS
651463	INTRO CHEMISTRY	11	F65	5	F		
	COMPOSITION ENGLISH	10	F65	3	C	3	
	AMERICAN CIVILIZ	3	F65	3	C	3	
	ANALYTIC GEOM CAL 1	80	F65	5	F		
	LOW GRADE PT AVERAGE REPORTED - Suspended from the University for one year effective February 9, 1966						March 24, 1966
	Allowed to re-enter the University on Probation effective February 10, 1966						March 24, 1966
651463	GENERAL BIOLOGY	1	W66	3	D	3	
	GENERAL, ECONOMICS	50	W66	3	D	3	
	LITERARY TYPES	12	W66	3	D	3	
	ENGR DRAWING	1	W66	3	B	3	
	ELE SPANISH	1	W66	4	D	4	
	LOW GRADE PT AVERAGE REPORTED - Dismissed frm the University effective June 8, 1966						July 20, 1966
	Continued on Scholastic Probation - November 20, 1970						November 24, 1970
	Advanced Standing - St. Louis Junior College 1970						January 1971
	American History					3	
	Intro Sociology					3	
	College Algebra					3	
	Physical Science					3	
	General Psych					3	
						(15)	
	Advanced Standing - St. Louis Junior College 1970						February 1971
	Elem French					4	
	Amer Soc Prob					3	
	General Psychol					3	
	Social Psych					3	
	Hist West Phil					3	
						(16)	
651463	ASIAN CIVILIZATION	211	W71	3	B	3	
	MASTERPIECES OF ART	1	W71	3	B	3	
	GOV MOD SOCIETY	11	W71	3	B	3	
	ADOLESCENT PSYCH	271	W71	3	C	3	
	SCHL IN CONTEMP SOC	101	W71	3	A	3	
651463	CONTINUED ON SCHOLASTIC PROBATION - JUNE 5,1971						

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	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS	LEVEL	GRADE	CREDIT HOURS GRANTED	REMARKS
[illegible]	TECHNIQUES SEC SCH TCHG	165	S71	3		B	3	
	WESTERN CIVILIZATION	10	S71	3		B	3	
651463	INTRO TO GEOGRAPHY	101	F71	3		C	3	
	BLACK HISTORY	230	F71	3		A	3	
	GOV IN MOD SOCIETY	12	F71	3		B	3	
	PSYCH STATISTICS	201	F71	4		C	4	
651463	REMOVED FROM SCHOLASTIC PROBATION - DEC 24,1971							1/24/72
651463	PSYCH TCHG LEARNING	302	W72	3		A	3	
	EUROPEAN CIVILIZATN	12	W72	3		C	3	
	SEN SEM PSYCHOLOGY	193	W72	3		A	3	
	GEN EX PSYCHOLOGY	219	W72	3		B	3	
	ISUES CONT REL THGHT	70	W72	3		BA	3	
651463	SENIOR RDGS-PSYCH 66	192	F72	3		A	3	
	PSYCH TEST&MEASURMNT 66	265	F72	3		C	3	
	HIST&SYST OF PSYCH 66	261	F72	3		C	3	
651463	SEC SCHL STUD TCHG 27	271	W73	6		A	6	
	C&METH TCHG HIST&SS 38	265	W73	3		A	3	
	CHILD PSYCHOLOGY 66	170	W73	3		B	3	

123 hrs

December 10, 1

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[illegible] AND CERTIFICATES

B.S. in Education - May 17, 1973
Social Studies - Psychology

[illegible] GATE APPROVED

[illegible] REG'S OFFICE

356

351

111

651463

UNIVERSITY OF MISSOURI

DIRECTOR OF ADMISSIONS
AT ST. LOUIS

PERMANENT RECORD CARD

Bomyer, Terry Glen (NAME OF STUDENT) — Theodore R. Bomyer (NAME OF PARENT OR GUARDIAN)

1102 Huessin Dr. St. Louis, Missouri 63138 (PERMANENT ADDRESS) — (ADDRESS)

PROBATION (SCH) ☐ DATE OF BIRTH 6-25-1947 PLACE OF BIRTH St. Louis, Missouri

ENTRANCE CREDITS

ADMITTED TO DAY DIVISION DATE Oct. 1965 — ADMITTED TO SCHOOL OF EDUCATION DATE AUGUST

CREDITS FROM Hazelwood High School, St. Louis, Missouri CONDITION — GRAD June 1965 — ADMITTED TO DATE

ENGLISH	4	MATH ANALYSIS	½	LATIN	
GENERAL MATH		SOCIAL STUDIES	3½	FRENCH	
ALGEBRA	1	GENERAL SCIENCE		SPANISH	1
PLANE GEOM	1				
SOLID GEOM				ADMITTED TO	DATE
TRIGONOMY					

STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED BOMYER TERRY G

SOCIAL SECURITY NO. A92-[illegible]

STUDENT NUMBER 651

DATE ISSUED 06/26/73 (Mo. Day Yr.)

VALID FROM 07/01/72 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.
	BS	73	ED

UNIV OF MO ST.

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
SOC ST 7-12	23	66
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

SUBJECT OR SERVICE	CERTIFICATE CODE
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

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COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void
A full statement of certificate abbreviations and code numbers is shown on the reverse side of the certificate.

Commissioner of Education

LOW GRADE PT AVERAGE REPORTED - Dismissed [illegible]

Continued on Scholastic Probation - November 20, 1970 — November [illegible]

Advanced Standing - St. Louis Junior College 1970 — January 1971

American History	3
Intro Sociology	3
College Algebra	3
Physical Science	3
General Psych	3
	(15)

Advanced Standing - St. Louis Junior College 1970 — February 1971

Elem French	4
Amer Soc Probl	3
General Psychol	3
Social Psych	3
Hist West Phil	3
	(16)

651463	ASIAN CIVILIZATION	211	W71	3	C	3
	MASTERPIECES OF ART	1	W71	3	B	3
	GOV MOD SOCIETY	11	W71	3	C	3
	ADOLESCENT PSYCH	271	W71	3	C	3
	SCHL IN CONTEMP SOC	101	W71	3	A	3

651463 CONTINUED ON SCHOLASTIC PROBATION - JUNE 5,1971 — 357 — 6/25/71

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Mr. Terry Glen Bommer
1102 Marcia
St. Louis, Missouri 63138

Dear Mr. BommerL

Please find enclosed your contract to teach Family Relations at the Hazelwood Senior High School for the 1973-74 school year. Please sign both copies of the contract and return both copies to this office at your earliest convenience for Board of Education signatures and approval at the official Board of Education meeting on May 17, 1973.

We are requesting that you forward your Missouri Teachers Certificate and a complete Transcript fo all your college credits to this office as soon as they are available. If you do not have a valid certificate

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it is suggested that you make application for this certificate at the earliest possible date so that you will be certified prior to your entering the class room on September 4, 1973.

It is further requested that you keep us advised of any change of address so that we may forward appropriate information.

Please be assured we are happy to have you with us and we take this opportunity to welcome you to the Hazelwood teaching staff.

Very truly yours,

J. W. Hord
Director of Personnel

JWH/h
encl:

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FOR PERSONNEL OFFICE USE ONLY

Received [illegible]

Acknowledge [illegible]

Req. Credentials [illegible]

Set Interview [illegible]

Interview Date 4-14-72 7:30

Action [illegible]

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT

Date 5-2-72

Assignment [illegible]

Building [illegible]

Salary $7[illegible]

Signature [illegible]

I. PERSONAL

Date April 4, 1972

Soc. Security No. 494-50-6304

M Castle (Last Name) Cynthia (First Name) Jean (Middle Name)

Present address 900 South Providence (Street) Columbia (City) Mo. (State) 65201 (Zip Code) 442-9419 (Tele. No.)

mail → Permanent address 8804 Lynnwood (Street) Jennings (City) Mo. (State) 63136 (Zip Code) 869-2602 (Tele. No.)

Position desired:

Elementary Level _____ (Grade) (List in Priority) (other)

Junior or Senior High School English (Subjects)

Other Positions _____

Date of Birth February 18, 1950 Height 5'7" Weight 123 lbs.

Married no No of Children none Wife or Husband, living? _____ Divorced _____

Separated _____ Number of persons wholly dependent upon you for support _____

Physical Defects (a) Sight none (b) Hearing none (c) Other Defects none

Condition of health for past two years good

With what Community Organizations are you associated? none at present

In what recreations do you engage? Outdoor swimming, golf, softball

Indoor basketball, sewing, music

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? Campfire Girls- program aide, Counselor, swimming; Girls Daughters

Are you left handed? _____ or right handed? Yes

Would you arrange for a personal interview? Yes 126

Military Status _____

II. EDUCATION AND PROFESSIONAL TRAINING

High School Jennings Senior High Address Jennings, Mo. Total Units

Diploma Yes Yes Dates of Attendance Graduated 1968
No

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	[illegible] Hrs. C[illegible]
U. of Mo. Columbia	68-72	B.S.	English	33	19	
Grand Total Credits						

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☐

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☒ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State

Have you ever had a teaching certificate revoked? If so, explain with attached statement. No

118

Give last date in school May 1972 Do you plan to continue graduate work? Yes

If so, in what field? Education Place

Date Available for employment September 1972

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary

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Total years experience in Elementary Schools? Junior High School?

Senior High School? . Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 8 Subject Area (If applicable) English, Creative Writing

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? No

If yes, explain with attached statement.

Why do you wish to leave your present position? or
Why do you wish to return to teaching?

Why do you wish to teach here? St. Louis area; familiar with school district

What salary are you receiving now? _____ What salary do you expect to receive here? 1st year

VI. PROFESSIONAL GROWTH

What professional magazines do you read? N.E.A., English Journal

What books have you read during the past year? Light In August, The Power and the Glory, Watt, various plays of Sophocles and Euripides, God's Little Acre

Of what professional organizations are you a member? None at present

What professional recognition have you had? None

Extent of travel throughout the United States; Canada; Mexico

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play?

Applicant's comment concerning the retention of children in primary grades

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Cheerleaders; Drama Club; F.T.A.; Quill and Scroll; Student Council

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction Creative Writing

Audio Visual Aids tape recorder, slide projector, film projector, sound film

Programmed Instruction Mini packets 128

Initial Teaching Alphabet (its)

Behavioral (measurable) Objectives Unit plans

SECTION IX., CONT.

Differentiated Staffing _____

Modern Mathematics _____

Ability Grouping (Reading) _____

Team Teaching Student Teaching

Non-Graded _____

Group Guidance _____

Supervised Study _____

Please comment on any other special training and/or experience(s) which you have had.

_____

_____

_____

_____

_____

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
U. of Mo. Placement Office		
will send complete file,		
including references		

All spaces applicable must be completed in full.

The statements made herein are true to the best of my kHowledge and belief:

DATE April 4, 1972 SIGNATURE Cynthia Jean Castle

(Completed application should be returned to Personnel Office)

February 2, 1973

Ms. Cynthia Castle
14313 Sun Swept Park, Court 104
Florissant, Mo. 630333

8804 Lynnwood
St. Louis 63136
869-2695
C

Dear Ms. Castle:

Your request for release from your contractual agreement for extra duty only was presented to the Board of Education at their regular meeting last evening.

Your request was granted.

Sincerely,

C. O. McDonald,
Superintendent

CCM/vb
cc: Mr. Flynn
Mr. Huss, Secondary Coordinator
Mr. Ward, Personnel Director

HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATIONS

Contract for 3 yr

Name of Applicant Miss Cynthia Castle Date of Interview 4-15

Highest Degree Held B.S. College or University [illegible]

Interview for English (Subject) position at Senior High (Name of School)

Indicate below your rating of the applicant by placing a check mark in the appropriate space:

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area		✓		38 hrs. + [illegible]
2. Technical knowledge of learning processes and conditions		✓		
3. Knowledge, understanding, and appreciation of children		✓		
4. Skill in expression	✓			
5. Personal appearance and grooming	✓			
6. Poise, self-control, confidence	✓			
7. Attitude and sincerity	✓			
8. Sense of humor		✓		

Additional comment or evaluation statement: Qualified for pep club - Cheerleading Experience in mini packets and team teaching.

Recommended [X] Not recommended for employment [ ]

Position English - Sr. High Years of Creditable Experience 0

C. Gillard
Department Chairman

Lawrence J. Tuggle
Principal

J. C. Hess
Coordinator of Secondary Education

Revised 1971

144266
STUDENT NUMBER

UNIVERSITY OF MISSOURI

DIRECTOR OF ADMISSIONS
COLUMBIA

PERMANENT RECORD CARD

CASTLE CYNTHIA JEAN
(NAME OF STUDENT)

Mr. Fred F. Castle Sr.
(PARENT OR GUARDIAN)

8804 LYNWOOD PL
JENNINGS MO 63136
(PERMANENT ADDRESS)

(ADDRESS)

PROBATION (SCH) ☐ DATE OF BIRTH 2-18-50

PLACE OF BIRTH Bloomington, Illinois

ENTRANCE CREDITS

ADMITTED TO ARTS & SCIENCE DATE F-68

CREDITS FROM Jennings High School CONDITION
Jennings, Missouri GRAD June 1968

ENGLISH	MATH ANALYSIS	LATIN
GENERAL MATH	SOCIAL STUDIES	FRENCH
ALGEBRA	GENERAL SCIENCE	SPANISH
PLANE GEOMETRY	BIOLOGY	GERMAN
SOLID GEOMETRY	CHEMISTRY	OTHER
TRIGONOMETRY	PHYSICS	

CREDITS

ADMITTED TO EDUCATION DATE F-70

ADMITTED TO DATE

ADMITTED TO DATE

DEGREE

DATE

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED CASTLE CYNTHIA J SOCIAL SECURITY NO. 494-50-6305

DATE ISSUED 05/22/72 (Mo. Day Yr.)

VALID FROM 07/01/71 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.	
	BS	72	ED	UNIV MO COL

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
ENG 7-12	23	48
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

SUBJECT OR SERVICE	CERTIFICATE CODE	
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

An official list of certificate abbreviations and code numbers is shown on the reverse side of this certificate.

Commissioner of Education

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(life) 8.5.

UNIVERSITY OF MISSOURI
DIRECTOR OF ADMISSIONS
COLUMBIA

CASTLE CYNTHIA JEAN
(NAME OF STUDENT)

Mr. Fred F. Castle Sr.
(PARENT OR GUARDIAN)

8804 LYNWOOD PL
JENNINGS MO 63136
(PERMANENT ADDRESS)

(ADDRESS)

PROBATION (SCH) ☐ DATE OF BIRTH 2-18-50 PLACE OF BIRTH Bloomington, Illinois

ENTRANCE CREDITS

ADMITTED TO ARTS & SCIENCE DATE F-68
CREDITS FROM Jennings High School CONDITION
Jennings, Missouri GRAD June 1968

ENGLISH	MATH ANALYSIS	LATIN
GENERAL MATH	SOCIAL STUDIES	FRENCH
ALGEBRA	GENERAL SCIENCE	SPANISH
PLANE GEOMETRY	BIOLOGY	GERMAN
SOLID GEOMETRY	CHEMISTRY	OTHER
TRIGONOMETRY	PHYSICS	

ADMITTED TO EDUCATION DATE F-70
ADMITTED TO DATE
ADMITTED TO DATE
DEGREE
DATE

UNIVERSITY CREDITS

GRADING SYSTEM CODE: ABCDF 6-DELAYED, 9-EXCUSED

STUDENT NUMBER	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS	GRADE	CREDIT HOURS GRANTED	REMARKS
144266	COMPOSITION ENGLISH	1	F68	3	C	3	
	ELE FRENCH 1	1	F68	5	C	5	
	AMERICAN HISTORY	20	F68	5	B	5	
	PH ED FRESHMAN WOMEN	3	F68	1	C	1	
144266	INTRO TO WESTERN ART	10	W69	3	D	3	
	ELEM FRENCH 2	2	W69	5	D	5	
	PRINCIPLES OF GEOL	1	W69	5	D	5	
	COLLEGE ALGEBRA	10	W69	3	F		
	PH ED FRESHMAN WOMEN	4	W69	1	D	1	
144266	LOW GPA REPORTED - A&S PLACED ON SCHOLASTIC PROBATION, ONCE DISMISSED-June 2, 1969.						
144266	APPRECIATION OF ART	3	S69	2	C	2	1969)
	ENGLISH LIFE & LIT	40	S69	3	C	3	
144266	LOW GPA REPORTED - August 1,1969.(September 2,1969) A&S CONTINUED ON SCHOLASTIC PROBATION, ONCE DISMISSED						
144266	CLASSICAL MYTHOLOGY 2W	60	F69	3	C	3	
	INTRO MUSIC LIT 6U	21	F69	2	C	2	
	PH ED SOPH WOMEN 5A	7	F69	1	F		
	GEN EXPER PSYCHOLOGY 8M	2	F69	5	C	5	
	PUBLIC SPEAKING 9J	175	F69	3	C	3	
144266	LOW GPA REPORTED - A&S CONTINUED ON SCHOL PROB, ONCE DISMISSED 01-26-70 (4-01-70)						
144266	EDUC PSYCHOLOGY 3P	A102	W70	2	C	2	
	MASTERPIECES 3T	5	W70	2	B	2	
	PH ED SOPHOMOR WOMEN 5A	8	W70	1	F		
	AMERICAN GOVERNMENT 7Z	1	W70	5	C	5	
	VOICE & ARTICULATION 9J	2	W70	2	B	2	
	ELE COMMUNITY HEALTH 2Y	25	W70	2	C	2	
144266	A&S REMOVED FROM SCHOLASTIC PROBATION 6-01-70 (7-09-70)						
144266	GENERAL BOTANY 2K	1	S70	5	A	5	
144266	EXPOSITION ENGLISH 3T	60	F70	3	B	3	
	AMERICAN LITERATURE 3T	175	F70	3	B	3	

(OVER)

JUL 19 1972

130 131 133

144266 Castle, Cynthia Jean

STUDENT NUMBER	COURSE		COURSE NUMBER	TERM	NORMAL CREDIT HOURS	REPEAT	GRADE	CREDIT HOURS EARNED
	THE VICTORIAN POETS	3T	366	F70	3		D	3
	COLLEGE ALGEBRA	6H	10	F70	3		D	3
	INTRO PHILOSOPHY	7P	5	F70	3		C	3
	PH ED SOPHOMOR WOMEN	5A	7	F70	1		F	
144266	SEC SCH CURR INST	3E	D110	W71	2		B	2
	TEACHING ENGLISH	3E	D111	W71	2		C	2
	TCHG READ SEC SCH	3E	D365	W71	2		B	2
	ENGLISH LIFE & LITER	3T	30	W71	3		C	3
	PRACTICE CRITICISM	3T	316	W71	3		A	3
	PH ED SOPHOMOR WOMEN	5A	8	W71	1		F	
144266	STRUCTURE AMER ENGL	3T	319	S71	3		C	3
	SHAKESPEARE	3T	336	S71	3		C	3
144266	STUD TCHG SEC SCH	3E	D199	F71	8		A	8
	SCH ORG ADM SEC TCHR	3N	C140	F71	2		B	2
	INTELLCTL FNDTNS EDU	9E	B353	F71	3		B	3
	INTR EDUC MEAS EVAL	3P	A140	F71	2		B	2
	TERM HRS.- 15.0	TERM GR. PTS.- 53.0			TERM GPA-3.5333			
	CUM. HRS.-113.0	CUM. GR. PTS.- 259.0			CUM. GPA-2.2920			

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144266	GREEK & ROMAN DRAMA	2W	226	W72	3		B	3
	HIST ENGLISH LANG	3T	320	W72	3		C	3
	CH MOD NOV TO 1940	3T	391	W72	3		C	3
	GENERAL SOCIOLOGY	9D	1	W72	3		B	3
	TERM HRS.- 12.0	TERM GR. PTS.- 30.0			TERM GPA-2.5000			
	CUM. HRS.-125.0	CUM. GR. PTS.- 289.0			CUM. GPA-2.3120			

144266 NCATE ACCREDITED-CERTIFICATED TO TEACH:
GENERAL LANGUAGE ARTS IN GRADES 7-9
ENGLISH IN GRADES 7-12
EFFECTIVE DATE: JUNE, 1972

125 hrs

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BEST COPY AVAILABLE

Rec'd:

Interview:

Rec. Credentials

Set Interview

Hazelwood School District

I. PERSONAL

Date 11-1-77

Soc. Security No. [redacted]

Cox Jean Ann
(Last Name) (First Name) (Middle Name)

Present address
(Street) (City) (State) (Zip Code) (Tele No.)

Permanent address [redacted]
(Street) (City) (State) (Zip Code) (Tele No.)

Position desired:

Elementary Level Reading Teacher
(Grade) (List in Priority) (other)

Junior or Senior High School History, Social Studies, Rdg. Problems.
(Subjects)

Other Positions

Date of Birth July 30, 1954 Height 5'5" Weight 130

Married yes No. of Children 2 Wife or Husband, living? yes Divorced

Separated yes Number of persons wholly dependent upon you for support 2

Physical Defects (a) Sight Overweight (b) Hearing (c) Other Defects

Condition of health for past two years excellent

With what Community Organizations are you associated? Lutheran church where I have actively been in Christian education program. Have recruited people to serve, etc.

In what recreations do you engage? Outdoor Tennis, water activities

Indoor Basketball, Bowling,

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? yes - Girl Scouts, with Girls Music Choirs.

Are you left handed? or right handed? yes

Would you arrange for a personal interview? yes

Military Status

(You may renew your application each year by bringing it up to date)

II. EDUCATION AND PROFESSIONAL TRAINING

High School Watkins Address [illegible] Total Units [illegible]

Diploma? Yes No

College attended Name & Location	No. of Hours	Kind of Degree	Date Rec'd.	Credits in Major	Credits in Minor
[illegible]					
[illegible]					
Grand Total Credits					

Do you hold a certificate valid in Missouri? Yes If so, circle below:

2 Yr. (Life) Elem. or (Secondary)

List any other teaching certificates you may hold and give State I earned a '72 expire
I hold Temporary Certification in Reading K-12. (Expires June 1973)

Have you ever had a teaching certificate revoked? If so, explain with attached statement (No)

Give last date in school May '71 Do you plan to continue graduate work? Yes

If so, in what field? Specialization in Reading Secondary Schools Place UMSL

Date Available for employment Now

III. TEACHING EXPERIENCE

Have also substituted in the Ferguson-Florissant School District

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No Teachers in System	Salary

Total years experience in Elementary Schools? 0 Junior High School? 0

Senior High School? 0. In which of the above was your observation and practice teaching done?

Latin I and Senior High Social World History Fall '71

Any additional information that will give a more complete estimate of your training, experience, and qualifications for teaching and placement office should be sent at earliest convenience to Personnel Office

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? No

If yes, explain with attached statement.

[illegible] to leave your present position? or

[illegible] teaching?

Why do you wish to teach here? [illegible]

What salary are you receiving now? ____ What salary do you expect to receive here?

VI. PROFESSIONAL GROWTH

What professional magazines do you read? Current History, Education

P-TA magazine, Scholastic Teacher

What books have you read during the past year? [illegible]

Our Day, Jr. Classic Reader, Tragic Story of Texas, Dimensions

Of what professional organizations are you a member? Council for the Social Studies

What professional recognization have you had? [illegible]

Extent of travel Limited, but plan to change that

VII FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

Do you sing? Yes Teach music? (Vocal) ____ Art? ____

(Instrumental ____ Courses in college or

Penmanship? (Manuscript ____ of reading? Yes ____

(Cursive ____ How many semesters

What musical instruments do you play? ____

Can you teach physical education successfully? ____

Can you teach rote songs successfully? ____

Applicant's comment concerning retention in primary grades ____

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? [illegible]

with music and dramatics, typing, [illegible]

coaching or directing

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Audio Visual Aids Can use most equipment

Programmed Instruction Used this [illegible]

Is successful with some in teaching reading

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SECTION IX., CONT.

Group Guidance [illegible] to be skilled.

Supervised Study

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	7536 Roseland, 60615	Guidance Counselor

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The statements made herein are true to the best of my knowledge and belief:

DATE July 6, 1971 SIGNATURE [illegible]

(Completed application should be returned to Personnel Office)

INSERVICE CREDIT HISTORY (FOR OFFICE USE ONLY)

Year	Credit Category	Year	Credit Category
	157		

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Contact for employment

Date of birth

College or University

Indicate below your rating of the applicant by placing a check mark in the appropriate column.

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area		✓		
2. Technical knowledge of learning processes and conditions		✓		
3. Knowledge, understanding, and appreciation of children		✓		
4. Skill in expression		✓		
5. Personal appearance and grooming		✓		
6. Poise, self-control, confidence		✓		
7. Attitude and sincerity		✓		
8. Sense of humor		✓		

Additional comment or evaluation statement:

Recommended ☒ Not recommended for employment ☐

Position

Years of Creditable Experience

Department Chairman

Principal

Coordinator of Secondary Education

Revised 1971

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BEST COPY AVAILABLE

COPY FOR SUPERINTENDENT'S FILE

APPLICATION FOR A MISSOURI TEACHER'S CERTIFICATE

Jean McFall, Jean 2 2

University of Missouri at St. Louis BS 71

x

STATEMENT OF PROFESSIONAL COMMITMENT TO TEACHING — MISSOURI

DIRECTIONS: Three copies of this form should be completed by the student and submitted to Paul Grebe, Director of Teacher Education and Certification, State Department of Elementary and Secondary Education, Jefferson City, Missouri. Upon approval by State Department, one copy will be returned to the institution for the student's credentials.

Jean McFall

same basis as that required for graduation. Participation in student teaching is an integral part of the program. Satisfactory completion of the student teaching experience is required for the issuance of a teacher's certificate. (Ed.Dir)

The following courses are planned for the remainder of the student's program:

Name of Course	Sem. Hrs.	Name of Course	Sem. Hrs.
Practicum in Diagnosis of Reading Difficulties	3		

Practicum in Remediation of
Reading Difficulties 3

Date July 5, 1972

SEMESTER 1st 1972 University of Missouri at St. Louis

Subjects and Grade Level in which teacher's certificate is requested: Secondary Reading Grades 7-12

STATE DEPARTMENT OF EDUCATION

7-11-72

ACADEMIC CONTRACT FOR CERTIFICATION IN MISSOURI

In consideration of the ... I understand that a file ... then be issued, by the State Department of Education.

With the acceptance of the certificate I plan to assume my ... and responsibilities as a member of a learning profession.

Date July 5, 1972

625 Ridden Drive Florissant, Missouri

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UNIVERSITY OF MISSOURI

UNIVERSITY CREDITS

STUDENT NUMBER	COURSE		COURSE NUMBER	TERM	CREDIT HOURS		GRADE POINT VALUE	
97897	ENGLISH COMP	SL	2	W64	3		A	3
	ENG LIFE & LIT	SL	30	W64	3		B	3
	INTRO PHILOSOPHY	SL	5	W64	3		B	3
97897	WEST CIVILIZATION	SL	1	F64	3		A	3
97897	MATHEMATICS		15	W68	3		C	3
	INTRO TO MUSIC LIT		1	W68	3		B	3
	GENERAL PSYCHOLOGY		1	W68	3		B	3

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97897	GENERAL BIOLOGY	1	F68	3	B	3
	GENERAL BIOLOGY LAB	3	F68	2	A	2
	EUROPEAN CIVILIZ	2	F68	3	A	3
	GOVT MODERN SOCIETY	11	F68	3	B	3
97897	REGIONS AND NATIONS	157	W69	3	A	3
	AMERICAN CIVILIZ	3	W69	3	A	3
	STATE LOCAL GOVT	170	W69	3	A	3
	GEN PSYCHOLOGY	2	W69	3	C	3
	INTRO TO SOCIOLOGY	1	W69	3	B	3
97897	COMP GOVT & POLITICS	150	F69	3	P	3
	SCHOOL IN CONTEM SOC	101	F69	3	P	3
	AMERICAN CIV 2	4	F69	3	A	3
	EUROPE 19TH C	332	F69	3	B	3
	COLONL AMER-1763	353	F69	3	C	3
	ADOLESCENT PSYCH	271	F69	3	A	3
97897	MASTERPIECES OF ART	1	W70	3	P	3
	PSYCH OF TCH/LEARN	302	W70	3	A	3
	BLACK HISTORY	230	W70	3	A	3
	EUR IN THE 20TH CENT	333	W70	3	A	3
	JACKSONIAN DEMOCRACY	355	W70	3	B	3
	SPCL TOPICS HISTORY	350	W70	1	B	1
	SOCIOLOGICAL INQUIRY	20	W70	3	P	3
97897	GOV IN MOD SOCIETY	12	S70	3	B	3
	TECH S-C SCH TCHS	163	S70	3	A	3
97897	METH OF TC-ND HIST	355	F70	3	A	3
	SEC SCH STUD TC-J	271	F70	3	B	3

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FOR PERSONNEL OFFICE USE ONLY	HAZELWOOD SCHOOL DISTRICT	FOR SUPERINTENDENT'S USE
Received	15955 New Halls Ferry Rd.	Date 6-15-72
Acknowledge	Florissant, Mo. 63031	Assignment Eng. Sp.
Req. Credentials		Building Haz.
Set Interview		Salary BA Step C
Interview Date Dec 20	APPLICATION FOR TEACHING POSITION	Signature
Action Hold		

I. PERSONAL

Date December 19, 1972

Soc. Security No. 449-48-2622

Mr. Moll — Dale — Adrian
(Last Name) (First Name) (Middle Name)

Present address 206 Mary St. Perryville, Missouri 63775 314-547-4157
(Street) (City) (State) (Zip Code) (Tele. No.)

Permanent address 206 Mary St. Perryville, Missouri 63775 314-547-4157
(Street) (City) (State) (Zip Code) (Tele. No.)

Position desired: (Call first) Cape Girardeau 3rd or 4th out of town 547-[illegible]

Elementary Level ____
(Grade) (List in Priority) (other)

Junior or Senior High School English, Speech (Senior High preferably)
(Subjects)

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Other Positions _____

Date of Birth May 5, 1950 Height 5' 7½" Weight 150 lbs.

Married No No. of Children None Wife or Husband, living? _____ Divorced _____

Separated _____ Number of persons wholly dependent upon you for support None

Physical Defects (a) Sight None (b) Hearing None (c) Other Defects None

Condition of health for past two years Excellent

With what Community Organizations are you associated? Babe Ruth Baseball, Knights of Columbus

In what recreations do you engage? Outdoor Softball, football, handball

Indoor basketball, gym hockey

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? Boy Scouts, Babe Ruth Baseball, Little League Baseball

Are you left handed? _____ or right handed? X

Would you arrange for a personal interview? Yes, I would.

Military Status 1-H

265

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II. EDUCATION AND PROFESSIONAL T[illegible]G

High School St. Vincent's Address Perryville, Mo. Total Units 17

Diploma Yes / No Yes Dates of Attendance 1964-1968

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ	Total Hrs. Credit
Missouri University	'68-'70	none	English	9	none	38
SEMO State Univ.	'70-'73	B.S.Ed.	English	29	23	101
Grand Total Credits						139

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☐ No ☒

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☒ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☒ No ☐

List any other teaching certificates you may hold and give State none

151

Have you ever had a teaching certificate revoked? If so, explain with attached statement.

Give last date in school May, 1973 Do you plan to continue graduate work? Yes

If so, in what field? English Place SEMO State University

Date Available for employment August, 1973

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary

Total years experience in Elementary Schools? none Junior High School? none

Senior High School? ½. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 10-11 Subject Area (if applicable) English

Add by letter any additional information that will give a more complete estimate of your training, experience character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

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V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? No
If yes, explain with attached statement.

Why do you wish to leave your present position? or
Why do you wish to return to teaching?

Why do you wish to teach here? Good school, great people to work with

What salary are you receiving now? none What salary do you expect to receive here? ?

VI. PROFESSIONAL GROWTH

What professional magazines do you read? None particularly.

What books have you read during the past year? Erewhon, The Silent Language, Walden Two, Me, the Flunkie, Understanding Media, Native Son, Picture of Dorian Gray

Of what professional organizations are you a member? none at present

What professional recognition have you had? none

Extent of travel Mexico City, Acapulco, Smokey Mt., Florida, Texas, Kentucky

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

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What musical instruments do you play? _____

Applicant's comment concerning the retention of children in primary grades _____

_____

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Poetry magazine, debate, English Club, Writer's Club, Student Council, F.T.A., Philosophy Club

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction Differentiated Staffing

Audio Visual Aids Student teaching

Programmed Instruction none

Initial Teaching Alphabet (ita) none

Behavioral (measurable) Objectives none

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SECTION IX., CONT.

Differentiated Staffing Student teaching

Modern Mathematics none

Ability Grouping (Reading) none

Team Teaching Student teaching

Non-Graded none

Group Guidance none

Supervised Study none

Please comment on any other special training and/or experience(s) which you have had.

Besides student teaching at H.H.S., I taught a literature course under the foreign student program at SEMO State University for 16 weeks. This was done in lieu of tutoring. Also, my experience with adolescents in the Babe Ruth program was invaluable.

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X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Mr. Almo McElmurry	Hazelwood Sr. High	English teacher
Dr. Katherine Green	SEMO State University	Supervisor of st. teach.
Dr. Fred E. Wing	SEMO State University	Prof. of English
Dr. Henry Sessoms	SEMO State University	Head of English Dep't.
Dr. Joseph Low	SEMO State University	Prof. of Speech
Mr. Robert Hamblin	SEMO State University	Prof. of English

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE Dec. 19, 1972 SIGNATURE Dale A. Moll

(Completed application should be returned to Personnel Office)

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED MOLL DALE A SOCIAL SECURITY NO. 499-[illegible]-2422

DATE ISSUED 06/11/73 (Mo. Day Yr.)

VALID FROM 07/01/72 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.	
	BS	73	ED	SE MO ST UNV

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE		CERTIFICATE CODE	
ENG	7-12	23	48
[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]

SUBJECT OR SERVICE		CERTIFICATE CODE
SP ORA	7-12	23
[illegible]		[illegible]
[illegible]		[illegible]
[illegible]		[illegible]
[illegible]		[illegible]

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

[illegible]

Commissioner of Education

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HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION FORM

Name of Applicant Moll, Dale A Date of Interview May 2, 1973

Highest Degree Held B.S.Ed College or University S.E.M.S.U.

Interview for English (Subject) position at Senior High (Name of School)

Indicate below your rating of the applicant by placing a check mark in the appropriate space.

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area		✓		
2. Technical knowledge of learning processes and conditions	✓			
3. Knowledge, understanding, and appreciation of children		✓		
4. Skill in expression	✓			
5. Personal appearance and grooming	✓			
6. Poise, self-control, confidence	✓			
7. Attitude and sincerity toward teaching profession	✓			
8. Sense of humor	✓			

Additional comment or evaluation statement:

Recommended ☑ Not recommended for employment ☐ Hold for future consideration ☐

Position Allied Arts & English Years of Creditable Experience C

FOR CENTRAL OFFICE USE ONLY

☒ Contact for employment to begin on 9-1-73 (Date)

(Signed)

(Department Chairman)

(Principal)

(Coordinator of Secondary Education)

SOUTHEAST MISSOURI STATE UNIVERSITY
CAPE GIRARDEAU, MISSOURI

Admitted From St. Vincent's, Perryville, Mo. Entered 5-3-70

Yr.H.S.Grad. 1969 Deg. B.S. in Educ.(H.S.), May 11, 1973

Maj. Engl. Min. Soc. Sci. Spec. Ed. Gen. Sci. Math. Sci. Gen. Ed.

11 4 3 2 1 1

Dept.	Course No.	Course Name		Sem. Hrs. Att.	Gr.	Sem. Hrs. Earned	Gr. Pts.
TRANSFERRED:							
UNIVERSITY OF MISSOURI, Columbia, Mo.							
A		English Comp.	(Fall 68)		B	3	
1		Ele French 1			C	5	
10		Athletics			C	3	
1		Phys Ed Freshman Men			A	1	
		American Government			D	5	
2		Elem French 2	(W 69)		C	5	
2		Phys Ed Freshman Men			D	1	
10		College Algebra			D	3	
55		Quant Relations			D	3	
1		Intro Zoology			F	(5)	
3T		Poetry	(Fall 69)		C	3	
3T		Shakespeare			C	3	
3T		American Literature			F	(3)	
3F		French Reading			F	(3)	
7P		Ele Logic			D	3	
5A		P.E. Sophomore Coll Req			F	(1)	
		* Repeat Summer-70					
ADMITTED ON SCHOLASTIC PROBATION							
499-48-2622		COLL DALE A	SUMMER 70				
PE	1664	TENNIS (MODIFIED T TN	01	1			
ENGL	1254	INTRO EPISTEMOLOGY	01	3	B	3	3
HIST	2270	AMERICAN LITERATURE	01	3	C	3	6
		Probation continued	SEM 2.143	7	C	7	15
499-48-2622		COLL DALE A	FALL 70				
ART	1345	GENERAL BIOLOGY	56	3.00	C	3.0	6.0
ENGL	3265	TEACH SEC ENGLISH	01	3.00	B	3.0	9.0
ENGL	2271	AMERICAN LITERATURE	03	3.00	C	3.0	6.0
PE	1674	S.C. GOLF	03	1.00	C	1.0	2.0
SPCH	2331	PUBLIC SPEAKING	01	3.00	C	3.0	6.0
		Probation continued	SEM 2.231	13.0		13.0	29.0
			CUM 1.642	67.0		58.0	110.0
499-48-2622		COLL DALE A	SPRING 71				
0	2251	GEN PSYCHOLOGY	07	3.00			
ENGL	3261	ENGLISH LITERATURE	03	3.00	B	3.0	9.0
PHYS	1471	ELEM PHYSICS	01	3.00		3.0	9.0
HIST	1371	AMERICAN HISTORY II	31	3.00		3.0	6.0
SSCI	1745	GENERAL SOCIOLOGY	07	3.00	C	3.0	6.0
		PROBATION CONTINUED					
			SEM 2.[illegible]	15.0		15.0	39.0
			CUM 1.[illegible]	[illegible].0		73.0	149.0

Soc. Sec. No. [illegible]

[illegible] DATE [illegible]
(Last Name) (First) (Middle)
Address: [illegible]
Parent-Guardian: Alden Hall
Birthplace & Date: Cape Girardeau, Mo. May 5, 1950

Dept.	Course No.	Course Name		Sem. Hrs. Att.	Gr.	Sem. Hrs. Earned	Gr. Pts.
[illegible]	2622	COLL DALE A	SUMMER 71				
ED	3223	EDUC PSYCHOLOGY	02	2.0	C	2.0	4
ENGL	3261	ENGLISH LITERATURE	01	3.0	A	3.0	9
HIST	1323	AMERICAN HISTORY II	02	2.0	B	2.0	6
		PROBATION CONTINUED					
			SEM 2.714	7.0		7.0	19
			CUM 1.388	89.0		80.0	68
[illegible]	2622	COLL DALE A	FALL 71				
SPCH	[illegible]	GROUP DISCUSSION	01	3.0	A	3.0	12
ENGL	3273	ADVANCED GRAMMAR	01	3.0	A	3.0	12
ENGL	3276	SCIENTIFIC COMPOSITION	03	2.0	B	2.0	6
PHYS	1722	ASTRONOMY	01	5.0	B	5.0	15
SPCH	1811	INTRO TO THEATRE	02	3.0	A	3.0	12
			SEM 3.963	14.0		15.0	57
			CUM 2.143	105.0		96.0	225
[illegible]	2622	COLL DALE A	SPRING 72				
ENGL	4273	HIST ENGLISH LANG	02	3.0	A	3.0	12
ED	4230	PROB TCH READ SEC SH	01	2.0	A	2.0	8
ED	3217	TECH TCH ENGLISH	01	4.0	A	4.0	16
ENGL	4271	MODERN AMER POETRY	01	3.0	C	3.0	6
SPCH	3810	STAGE CRAFT	01	3.0	C	3.0	6
			SEM 3.367	15.0		15.0	46
			CUM 2.258	120.0		111.0	271
[illegible]	2622	COLL DALE A	FALL 72				
ED	[illegible]432	ED FOUNDATIONS	2[illegible] 05	4.0	A	4.0	16
ED	[illegible]357	HUM GRTH DEV	2[illegible] 03	3.0	A	3.0	12
ED	[illegible]461	ST TEACH HS	LST-B 04	8.0	A	8.0	32
			SEM 4.000	15.0		15.0	60
			CUM 2.452	135.0		126.0	331
[illegible]	2622	COLL DALE A	SPRING 73				
SPCH	[illegible]340	INTERPRETATIVE READING	05	2.0	A	2.0	8
SPCH	[illegible]310	SPEECH COMPOSITION	01	2.0	B	2.0	6
ENGL	[illegible]260	19TH CENTURY LIT	01	3.0	B	3.0	9
SPCH	[illegible]510	INTER GROUP DYN	01	3.0	A	3.0	12
SSCI	[illegible]240	INTRO ANTHROPOLOGY	01	3.0	A	3.0	12
			SEM 1.[illegible]	13.0		13.0	47
			CUM 2.[illegible]	148.0		139.0	378

Bachelor of Science in Education (B.S.) - May 11, 1973
Major: English Minor: [illegible]

Alden Gray

REGISTRAR

JUN 1 [illegible]

EAST MISSOURI STATE UNIVERSITY
CAPE GIRARDEAU, MISSOURI
GRADUATE STUDIES
Cape Girardeau, Missouri

Entered 1-17-73 Admitted from Southeast Missouri State University
Reg B.S. in Educ.(H.S.), May 13, 1973
Prov
Special
Non Degree Degree:

Dept.	Course No.	Course Name		Sem. Hrs. Att.	Gr.	Sem. Hrs. Earned	Gr. Pts.
ENGL	[illegible]	Mod Of Comp	01 Spr 73	3.0	A	3.0	12.0
		SEM 4.000		3.0		3.0	12.0
		CUM 4.000		3.0		3.0	12.0

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BEST COPY AVAILABLE

Soc. Sec. No. [illegible]22

[illegible] (Last Name) [illegible] (First Name) [illegible] (Middle Name)
Address: [illegible]
[illegible] Date: [illegible], No. [illegible]y 5, 1950

Dept.	Course No.	Course Name	Sem. Hrs. Att.	Gr.	Sem. Hrs. Earned	Gr. Pts.

Robin Gray
REGISTRAR
[illegible] 13 1973

FOR PERSONNEL OFFICE USE ONLY
Received FEB 8 1973
Acknowledge
Req. Credentials
Set Interview
Interview Date
Action Hold

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

FOR SUPERINTENDENT'S USE ONLY
Date 1-24-73
Assignment Soc. Stud.
Building Jr. H.
Salary -
Signature

APPLICATION FOR TEACHING POSITION

I. PERSONAL

Date February 6, 1973

Soc. Security No. 431-60-7127

Ms. Munro (Besper) Linda Renée
(Last Name) (First Name) (Middle Name)

Present address 1219 Fontaine Lane St. Louis Mo. 63132
(Street) (City) (State) (Zip Code) (Tele. No.)

Permanent address 741-2342
(Street) (City) (State) (Zip Code) (Tele. No.)

Position desired:

Elementary Level -
(Grade) (List in Priority) (other)

Junior or Senior High School Social Studies
(Subjects)

Other Positions -

Date of Birth September 4, 1952 Height 5'6 Weight 112

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Married X No. of Children - Wife or Husband, living? Yes Divorced -

Separated - Number of persons wholly dependent upon you for support 0

Physical Defects (a) Sight - (b) Hearing - (c) Other Defects -

Condition of health for past two years Excellent

With what Community Organizations are you associated? Kate O'Reilly Scarry C... has worked with Vista, Kennedy Reading Clinic

In what recreations do you engage? Outdoor Tennis, Swimming, Skiing, ... Indoor Basket ball, Gymnastics, bowling, skating

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? Campfire - 4-H, Junior Achievement

Are you left handed? _____ or right handed? Yes

Would you arrange for a personal interview? Yes

Military Status Not applicable

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II. EDUCATION AND PROFESSIONAL TRAINING

High School Hazelwood Address Florissant, Mo Total Units 22.5

Diploma (Yes) No Dates of Attendance 1967 - 1970

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Univ. Mo - St. Louis	1970	B.S.	Sociology	34	24	120
	1973	Educ				
Grand Total Credits 120						

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☐ as of May 1973

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☒ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State —

Have you ever had a teaching certificate revoked? If so, explain with attached statement. No

Give last date in school Still attending Do you plan to continue graduate work? Yes

If so, in what field? Comp. and Guidance Place U. Mo. St. L.

Date Available for employment September 1973

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
Univ. Mo - St. Louis	Educ 101	72-73	1	2 - 4	$3.50 - hr part time

Total years experience in Elementary Schools? — Junior High School? —

Senior High School? —. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 7 Subject Area (if applicable) Soc. Studies

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? —
If yes, explain with attached statement. ---

Why do you wish to leave your present position? or —
Why do you wish to return to teaching?

Why do you wish to teach here? Location of elementary & high school, [illegible] teaching

What salary are you receiving now? — What salary do you expect to receive here? —

VI. PROFESSIONAL GROWTH

What professional magazines do you read? Psychology Today, Today's Ed[illegible]

What books have you read during the past year? (Only related to teaching) Total - 12
Sullivan: Maturity, Psychology of Teaching and Learning, Law, Education and Teaching

Of what professional organizations are you a member? —

What professional recognition have you had?

Extent of travel United States, Europe, Canada, Mexico

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? —

Applicant's comment concerning the retention of children in primary grades

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Experience in Cheerleading, Pep Club, Pep Banquets and dances, Student Council, Homecoming [illegible]

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction Have studied and used in Student Teaching

Audio Visual Aids Have studied and used in Student Teaching

Programmed Instruction Experience in college as a Teaching Assistant

Initial Teaching Alphabet (ita) —

Behavioral (measurable) Objectives Have studied and used in Student Teaching

SECTION IX., CONT.

Differentiated Staffing Student Teaching done with this program

Modern Mathematics —

Ability Grouping (Reading) —

Team Teaching Have studied and done reports on

Non-Graded Have studied only

Group Guidance —

Supervised Study Student teaching provided experience

Please comment on any other special training and/or experience(s) which you have had.

Along with student teaching and being an instructor at W.M.S.I., I did an extensive study of Hazelwood Last Year High Concerning 7th grade students and Reinforcement, which was recommended for publication.

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Robert Packard	4554 Bruce Manor	Asst. Prof - U. Tenn
Wayne Sykes	2454 C. Rat Run Court	Faculty Advisor -
Mary Tracy	4825 Chesapeake	University Supervisor
Collette Tyler	Southern Westchester Rt.	Cooperating Teacher
Herb Krause	933 Chester Drive	Cooperating Teacher

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE February 6, 1973 SIGNATURE Linda Bayne Miller

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION FORM

Name of Applicant Munro (Besper) Linda Renée Date of Interview 4-30-73

Highest Degree Held B.S. Educ. College or University UMSL

Interview for 8th Soc. Stud position at C.R. Kirby Jr High
Subject Name of School

Indicate below your rating of the applicant by placing a check mark in the appropriate space:

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area		✓		
2. Technical knowledge of learning processes and conditions		✓		
3. Knowledge, understanding, and appreciation of children		✓		
4. Skill in expression		✓		
5. Personal appearance and grooming	✓			
6. Poise, self-control, confidency		✓		
7. Attitude and sincerity toward teaching profession		✓		
8. Sense of humor		✓		

Additional comment or evaluation statement:

Recommended ☑ Not recommended for employment ☐ Hold for future consideration ☒

Position World Kulay Years of Creditable Experience 5

FOR CENTRAL OFFICE USE ONLY

☒ Contact for employment to begin on 9-1-73
Date

Signed

Department Chairman

Lawrence Tuzza
Principal

Coordinator of Secondary Education

Revised 1973

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The following are activities and honors that I was involved in during my three years of college at the University of Missouri at St. Louis that I believe would help to give a more complete estimate of my training, experience and character.

-I was a member of Delta Zeta Sorority for three years, of which I held two offices, that of president and of recording secretary.

-For two years I was chosen to be a varsity cheerleader

- In the Pep Club I held the office of publicity chairman

- I was appointed to be on the planning committees for Homecoming and the Student Affairs Banquet.

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- I served in the position of a guide for visiting parents and also members of the Missouri Legislature while at the campus.

- For two years my name appeared in Who's Who In American Colleges and Universities.

-The Office of Student Affairs presented me with a certificate in recognition of my "contribution to the U.M.S.L. Community".

-The Athletic Department presented me with a certificate "For Excellence in Athletic Attainment".

-I was on the Dean's List

-I served as an instructor in an introductory education course at U.M.S.L.

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED MUNRO LINDA B SOCIAL SECURITY NO. 488-[illegible]-7528

DATE ISSUED 06/26/73 (Mo. Day Yr.)

VALID FROM 07/01/72 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.
	BS	73	ED

UNIV OF STL

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
SCC ST 7-12	23	66
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

SUBJECT OR SERVICE	CERTIFICATE CODE
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

[illegible]
Commissioner of [illegible]

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703774 STUDENT NUMBER

PERMANENT RECORD CARD

University of Missouri
ST. LOUIS
DIRECTOR OF ADMISSIONS

Munro, Besper, Linda Renee (NAME OF STUDENT)

Ernest Charles Besper (PARENT OR GUARDIAN)

12219 Fontaine Lane, St. Louis, Mo. 63138 (PERMANENT ADDRESS)

(ADDRESS)

PROBATION (SCH) ☐ DATE OF BIRTH 9-4-1952 PLACE OF BIRTH St. Louis, Missouri

ENTRANCE CREDITS

ADMITTED TO EVENING COLLEGE DATE June 1970

CREDITS FROM Hazelwood High School CONDITION

Florissant, Missouri GRAD June 1970

ADMITTED TO ARTS AND SCIENCES DATE Sept. 1970

ADMITTED TO SCHOOL OF EDUCATION DATE F72

ADMITTED TO DATE

ADMITTED TO DATE

ADMITTED TO DATE

DEGREE

DATE

UNIVERSITY CREDITS

GRADING SYSTEM CODE: ABCDF 6-DELAYED, 9-EXCUSED

MIL. ☐☐☐☐ PE. ☐☐☐☐

STUDENT NUMBER	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS	GRADE	GRADE POINTS	CREDIT HOURS GRANTED	REMARKS
703774	GENERAL BIOLOGY	1	S70	3		B	3	
	GENERAL PSYCHOLOGY	1	S70	3		C	3	
703774	ENGLISH COMPOSITION	10	F70	3		B	3	
	STRUC MATH SYSTEMS I	50	F70	3		B	3	
	GENERAL PSYCHOLOGY	2	F70	3		C	3	
	MASTERPIECES OF ART	1	F70	3		C	3	
	AMERICAN CIV	3	F70	3		C	3	
703774	MATH SYSTEMS II	51	W71	3		P	3	
	CHILD PSYCHOLOGY	270	W71	3		A	3	

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	INTRO THRY MUSIC		134	W71	2		B	2		
	AMER CIVILIZATION II		4	W71	3		B	3		
	LITERARY TYPES		12	W71	3		A	3		
	ADOLESCENT PSYCH		271	W71	3		C	3		
703774	SCHL IN CONTEMP SOC		101	S71	3		A	3		
	WESTERN CIVILIZATION		10	S71	3		B	3		
	INTRO TO SOCIOLOGY		10	S71	3		B	3		
703774	INTRO AMER ECONOMY		40	F71	3		C	3		
	INTRO TO GEOGRAPHY		101	F71	3		C	3		
	ASIAN CIVILIZATION		210	F71	3		C	3		
	BLACK HISTORY		230	F71	3		B	3		
	GOV IN MOD SOCIETY		11	F71	3		C	3		
	SOCIOLOGICAL INQUIRY		20	F71	3		B	3		
703774	MAN CULTURE SOCIETY		11	W72	3		P	3		
	TECH OF SEC SCH TCHG		163	W72	3		B	3		
	PSYCH TCHG LEARNING		302	W72	3		A	3		
	SOCIAL PSYCHOLOGY		160	W72	3		B	3		
	SOCIOLOGICAL THEORY		110	W72	3		C	3		
	QUANTITATIVE TECHNQS		120	W72	3		B	3		
703774	GOV IN MOD SOCIETY 2	62	12	S72	3		6B	3	September 6, 1973	
	SOCIOLOGY OF FAMILY	69	224	S72	3		6A	3	January 10, 1973	
	SPECIAL STUDY-SOCIOL	69	350	S72	1		6A	1	January 10, 1973	
703774	PRACTICUM-PERFORMANC	27	361	F72	3		A	3		
	EUR EARLY MIDDLE AGE	38	334	F72	3		6B	3	March 9, 1973	
	RESEARCH METHODS-SOC	69	130	F72	3		B	3		
	SOC DEVIANT BEHAVIOR	69	200	F72	3		B	3		
	JUVENILE DELINQUENCY	69	214	F72	3		6C	3	May 17, 1973	

(OVER)

703774

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Munro,
Beaper, Linda Renee

STUDENT NUMBER	COURSE		COURSE NUMBER	TERM	NORMAL CREDIT HOURS	REPEAT	GRADE	CREDIT HOURS GRANTED	COMMENTS
703774	SEC SCHL STUD TCHG	27	271	W73	6		A	6	
	C&METH TCHG HIST&SS	38	265	W73	3		A	3	
	ASPECTS SOCIAL WORK	69	142	W73	3		B	3	
	INST&CONT CRIME&DEL	69	328	W73	3		B	3	15

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DEGREES AND CERTIFICATES

B.S. in Education - May 17, 1973
Social Studies - Sociology

NCATE I

APPLICATION FOR TEACHING POSITION

I. PERSONAL

Date MAY 15 1973

Soc. Security No. 489-22-1771

Mr. SCHNEIDER, DEANS, EDMUND
(Last Name) (First Name) (Middle Name)

Present address 426 GROVELAND CREVE COEUR, MO. 63141
(Street) (City) (State) (Zip Code) (Tele No.)

Permanent address 551 LUCKMAN ST. LOUIS, MO 63109 353-2250
(Street) (City) (State) (Zip Code) (Tele No.)

Position desired

Elementary Level
(Grade) (List in Priority) (other)

Junior or Senior High School SOCIAL, PROFESSIONAL READING - ENGLISH
(Subjects)

Other Positions

Date of Birth APRIL 11, 1947 Height 5'7" Weight 175

Married NO No of Children N/H Wife or Husband, living? N/H Divorced N/H

Separated ____ Number of persons wholly dependent upon you for support NONE

Physical Defects (a) Sight NONE (b) Hearing NONE (c) Other Defects NONE

Condition of health for past two years GOOD

With what Community Organizations are you associated? NONE

In what recreations do you engage? Outdoor BASKETBALL

Indoor READING

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? NO

Are you left handed? ____ or right handed? YES

Would you arrange for a personal interview? YES

Military Status ~~NO MILITARY SERVICE~~ 4-F (REJECTED)

182

II EDUCATION AND PROFESSIONAL TRAINING

High School — [illegible] Address [illegible]

Grand Total Credits						

183

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☑ No ☐

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☑ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State MISSOURI — 2 YEAR CERTIFICATE FOR REMEDIAL & DEVELOPMENTAL READING

Have you ever had a teaching certificate revoked? If so, explain with attached statement [illegible]

Give last date in school [illegible] Do you plan to continue graduate work? YES [illegible]

If so, in what field? READING Place UNDECIDED [illegible]

Date Available for employment 5/17/73

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No of Yrs	No Teachers in System	Salar

Total years experience in Elementary Schools? [illegible] Junior High School? [illegible]

Senior High School? [illegible] Please indicate the grade level and or subject area in which your observ[illegible]

student teaching was done. Grade Levels [illegible] Subject Area of applicability [illegible]

Add to letter any additional information that will give a more complete estimate of your training, experience, ab[illegible]
ability. Credentials from placement office should be sent [illegible] Communications to Personnel Offi[illegible]

[illegible] expect to receive [illegible]

VI. PROFESSIONAL GROWTH

What professional magazines do you read? [illegible]

What books have you read during the past year? THE GRAPES OF WRATH - JOY LUCKLIN'S TRILOGY - JESSE, MACBETH AND GOLDILOCKS - BEHIND THE CLOSED DOOR, STEINBECK

Of what professional organizations are you a member? NONE

What professional recognition have you had? [illegible]

Extent of travel EAST & WEST COAST, SOUTHEAST & SOUTH CENTRAL STATES

BEST COPY AVAILABLE

VII FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? _____

Applicant's comment concerning the retention of children in primary grades _____

_____

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? ENGLISH AND READING ACTIVITIES AND CLUBS

_____

IX ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction _____

Audio Visual Aids _____

Programmed Instruction _____

Initial Teaching Alphabet _____

Behavioral Objectives _____

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SECTION IX , CONT

Modern Mathematics _____

Ability Grouping (Reading) _____

Team Teaching _____

Non-Graded _____

Group Guidance _____

Supervised Study _____

Please comment on any other special training and/or experience(s) which you have had.

MY STUDENT TEACHING EXPERIENCE INCLUDED TWO CLASSES IN DEVELOPMENTAL READING. MY INTEREST IN THIS FIELD LED ME TO PURSUE READING AND DEVELOPMENTAL READING IN GRADUATE SCHOOL

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X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability)

Name	Address	Official Position
MRS. L. HACKNEY	7321 ½ BALSOM (CITY)	TEACHER
DR. K. WESLEY	702 KICKAPOO DR. (CITY)	STUDENT TEACHING COORDINATOR SLMSC U.
MS. J. CELLMEYER	7410 NORMANDIE (CITY)	TEACHER

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE MAY 15, 1973 SIGNATURE Dennis E. Schneider

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION FORM

Name of Applicant SCHNEIDER, DENNIS Date of Interview 5/25/73

Highest Degree Held BS. College or University CAPE.

Interview for KENDING position at KIRBY
Subject Name of School

Indicate below your rating of the applicant by placing a check mark in the appropriate space:

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area	✓			
2. Technical knowledge of learning processes and conditions	✓			
3. Knowledge, understanding, and appreciation of children				
4. Skill in expression		✓		
5. Personal appearance and grooming		✓		

6. Poise, self-control, confidence		✓		
7. Attitude and sincerity toward teaching profession	✓			
8. Sense of humor	✓			

Additional comment or evaluation statements:
HE IS completing REQ FOR READING CERT.

Recommended [X] Not recommended for employment [ ] Hold for future consideration [ ]

Position KIRBY TEAM (ENGLISH) Years of Creditable Experience _____

FOR CENTRAL OFFICE USE ONLY

[X] Contact for employment to begin on

7-1-72
Date

Signed

Department Chairman

RWY Agee

118 C [illegible]

Commissioner of Secondary Education

Revised 1973

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED SCHNEIDER DENNIS E SOCIAL SECURITY NO. 489-48-1978

DATE ISSUED 08/09/72 (Mo. Day Yr.)

VALID FROM 07/01/72 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.	
	BS	72	ED	SC MO ST COL

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
ENG 7-12	23	48

SUBJECT OR SERVICE	CERTIFICATE CODE	

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

An official list of certificates cancelled and void current to [illegible] the year of this certificate.

Commissioner of Education

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July 7, 973

Dear Mr. Hall:

THIS IS TO INFORM YOU OF A CHANGE IN MY ADDRESS. CURRENTLY, I LIVE AT 5511 FINKMAN ST., ST. LOUIS, MO. 63109.

YOURS TRULY,

Dennis E. Schmidt

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July 7, 1973

Mr. Dennis E. Schneider
420 Good Hope
Cape Girardeau, Mo. 63701

Dear Mr. Schneider:

Please find enclosed your contract to teach English at the Kirby Junior High School for the 1973-74 school year. Please sign both copies of the contract and return both copies to this office at your earliest convenience for Board of Education signatures and approval at the official Board of Education meeting on July 19, 1973.

We are requesting that you forward your Missouri teachers certificate and a complete transcript of all your college credits to this office as soon as they are available. If you do not have a valid certificate it is suggested that you make application for this certificate immediately so that you will be certified prior to your entering the classroom on September 4, 1973.

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It is further requested that you keep us advised of any change of address so that we may forward appropriate information.

Please be assured we are happy to have you with us and we take this opportunity to welcome you to the Hazelwood teaching staff.

Very truly yours,

J. W. Nord
Director of Personnel

JWN/l
enc.

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July 2, 1973

Mr. Dennis E. Schneider
5511 Finkman
St. Louis, Missouri 63109

Dear Mr. Schneider:

Mr. Francis C. Russ, Secondary Coordinator for the Hazelwood School District, has requested that we contact you to advise you that we have a teaching position for you at the Kirby Junior High School for the 1973-74 school year teaching English and Reading. We must know immediately if you will accept this position.

This is a firm commitment and we would appreciate hearing from you by telephone or by return mail whether or not you will accept this position. We will send you a contract within a few days of notification that you agree to accept this position.

We look forward to your early reply.

196

Very truly yours,

J. W. Hord
Director of Personnel

JWH/b
cc: 420 Good Hope
Cape Girardeau, Mo. 63701

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FOR PERSONNEL OFFICE USE ONLY
Received AUG 2 2 1972
Acknowledge
Req. Credentials
Set Interview
Interview Date
Action

1/7 '73

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

FOR SUPERINTENDENT'S USE ONLY
Date 1-2-73
Assignment
Building
Salary
Signature

APPLICATION FOR TEACHING POSITION

I. PERSONAL

OFFICE PHONE #-921-3505

Date August 21, 1972

Soc. Security No. 493-50-6507

MRS. STUART JEANNE —
(Last Name) (First Name) (Middle Name)

Present address 885 ROBINWOOD, FLORISSANT, MO. 63033 921-6376
(Street) (City) (State) (Zip Code) (Tele. No.)

Permanent address SAME AS ABOVE
(Street) (City) (State) (Zip Code) (Tele. No.)

Position desired:

Elementary Level ~~THIRD, KINDERGARTEN~~ ALL
(Grade) (List in Priority) (other)

Junior or Senior High School _____
(Subjects)

Other Positions _____

Date of Birth SEPTEMBER 23, 1946 Height 5'7" Weight 130

Married YES No. of Children 0 Wife or Husband, living? YES Divorced _____

Separated _____ Number of persons wholly dependent upon you for support _____

Physical Defects (a) Sight NONE (b) Hearing NONE (c) Other Defects NONE

Condition of health for past two years EXCELLENT

With what Community Organizations are you associated? NONE

In what recreations do you engage? Outdoor BOATING, SWIMMING, SKIING, HORSEBACK RIDING

Indoor BOWLING

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? YES

Are you left handed? _____ or right handed? X

Would you arrange for a personal interview? YES

Military Status NOT APPLICABLE

564

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II. EDUCATION AND PROFESSIONAL TRAINING

High School WEBSTER GROVES H.S. Address 100 SELMA Total Units ____

Diploma (Yes) No Dates of Attendance 1958-1964

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
MERAMEC COMM. COLL.	1964-65	—	LIBERAL			30
UNIV. OF KANSAS	1965-69	B.S.	ELEM. ED.		48	94

Grand Total Credits 134

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☑ No ☐

Elem. 2 Yr. ☐ Life ☑ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

Certificate? Yes ☐ No ☐

Hold and give State ELEMENTARY EDUCATION OF KANSAS

liked? If so, explain with attached statement. No

Do you plan to continue graduate work? POSSIBLY

Place ____

IMMEDIATELY

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
I HAVE HAD NO PROFESSIONAL EXPERIENCE AS YET					
ANTIOCH - STUDENT TCH.	KNDG.	1969	—		

Total years experience in Elementary Schools? NONE Junior High School? ____

Senior High School? ____. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level KINDER. Subject Area (if applicable) 565

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

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V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? NOT APPLICABLE
If yes, explain with attached statement. _____

Why do you wish to leave your present position? or:
Why do you wish to return to teaching? I am anxious to apply myself to the teaching profession.
Why do you wish to teach here? I have heard that you have a fine school district.

What salary are you receiving now? $6,000.00 What salary do you expect to receive here? $7500.00

VI. PROFESSIONAL GROWTH

What professional magazines do you read? NONE

What books have you read during the past year? THE GODFATHER, THE BOAT THAT WOULD NOT SINK

Of what professional organizations are you a member? NONE

What professional recognition have you had? NONE

Extent of travel U.S.A and BAHAMAS

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VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? PIANO, GUITAR

Applicant's comment concerning the retention of children in primary grades I have found throughout my student teaching experience that these children are able to retain a large percentage of what is presented to them.

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? _____

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction IN SWIMMING AND HORSEBACK RIDING - I'M PROFESSIONAL
Audio Visual Aids MOVIE PROJECTORS, SLIDE PROJECTOR
Programmed Instruction NONE
Initial Teaching Alphabet (ita) NONE
Behavioral (measurable) Objectives NONE

566

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SECTION IX., CONT.

Differentiated Staffing — None

Modern Mathematics — "

Ability Grouping (Reading) — "

Team Teaching — "

Non-Graded — "

Group Guidance — "

Supervised Study — "

Please comment on any other special training and/or experience(s) which you have had.

As I stated earlier, I have had no professional teaching experience as yet. I am anxiously looking forward to securing a teaching position as soon as possible.

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
PLACEMENT CREDENTIALS ARE AVAILABLE AT:		
UNIVERSITY OF KANSAS		
DEPARTMENT OF EDUCATION		
BAILEY HALL		
LAWRENCE, KANSAS 66044		

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE August 21, 1972 SIGNATURE Jeanne Shuar

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy: application
1 copy: to Principal

Name of applicant: (Miss) (Mrs.) (Mrs.) Deanna Etta

Degree(s) held: B.S. Date 1967 From Univ. of Kansas
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: Kindergarten ½ day
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities		X		
2. Personal appearance and grooming	X			
3. Quality of voice and expression		X		
4. Poise, self-control, confidence	X			
5. Personality	+			
6. Attitude toward profession	+			
7. Appreciates the significance of the educational code of ethics	—	—		
8. Expresses a spirit of mutual respect	X			

New ☑ Former ☐ : Reason for termination: Resignation ☐, Leave: Maternity ☐
Advanced Study ☐, Medical ☐, Other (Specify): _____
Additional comments or evaluation statement:

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Miss Etta is presently working on I.A.(pc) in Kindergarten at Ed. She really wants full time teaching position. Therefore, she is not considered for this vacancy. Good candidate for 4th yr. student aged. Have seen her work.

☐ Recommended for _____ at _____.
Position School

☐ Recommended - No vacancy at my school.
☐ Not recommended

E. E. Kindred 11-20-70
Principal Date

Recommended for: _____ _____
Position School

Regular ☐

Years of creditable experience _____ _____ Prorated ☐
Salary

Further certification required: No ☐

If yes, explain: Yes ☐ 568
Elementary Coordinator

Effective date of employment (if other than the beginning of school term): _____

Rev: 3-19-71

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HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in triplicate:
1 copy w/ application
1 copy to personnel

Name of applicant: (Miss) (Mrs.) First Name Last Name

Degree(s) held: BS Date _____ From Texas Woman's
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: Teacher Asst. Aide
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities	✓			
2. Personal appearance and grooming	✓			
3. Quality of voice and expression	✓			
4. Poise, self-control, confidence	✓			
5. Personality	✓			
6. Attitude toward profession				
7. Appreciates the significance of the educational code of ethics				
8. Expresses a spirit of mutual respect				

New [ ] Former [ ] : Reason for termination: Resignation [ ], Leave: Maternity [ ]
Advanced Study [ ], Medical [ ], Other (Specify): _____
Additional comments or evaluation statement:

[X] Recommended for Teacher Asst. Aide Position at Greenview School
[ ] Recommended - No vacancy at my school.
[ ] Not recommended

Principal 4-22-72
Date

Recommended for: Teacher Aide Position Greenview School

Years of creditable experience _____ Salary _____

Regular [ ]
Pro-rated [ ]

Further certification required: No [ ]
If yes, explain: Yes [ ]
contact for acceptance.

J. E. Elson
Elementary Coordinator
8-30-72

Effective date of employment (if other than the beginning of school term _____
Feel her to call Mrs. for further details.

Rev: 5-19-7.

Complete in [illegible]:
1 copy w/[illegible]
1 copy for Principal

FAZILWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL [illegible] INTERVIEW
[illegible]

Name of applicant: (Miss) (Mrs.) (Mr.) Jeanne Stuart

Degree(s) held: B.S. Date 1969 From University of Kansas
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: Grade 2. Position at Garrett School

Indicate below your rating of applicant by placing check mark in proper [illegible]:

	Superior	Average	Unsat.	Comments
1. Knowledge of subject		X		
2. Personal appearance and grooming		X		
3. Quality of voice and expression	X			
4. Poise, self-control, confidence	X			
5. Evidence of refinement and cultural background	X			
6. Wholesomeness of mental attitude	X			
7. Evidence of sincerity	X			
8. Sense of humor		X		
9. Attitude toward professional associations		X		

Additional comment or evaluation statement:

I feel Mrs. Stuart would be a good candidate. She seemed to be a friendly person who would get on well.

Recommended ☒ Not recommended ☐ Principal

Recommended for: 2nd Gr. Position Garrett School

Years of creditable Experience _____ _____ Salary Regular ☐

Further certification required: No ☐ Pro-rata ☐

If yes, explain: Yes ☐ Elementary Coordinator

Check Mo. Cert.

For use of Office of Superintendent only: 570

Approved for employment at salary of: _____ _____

Effective date 2-12-13 or ASAP.

STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED STUART JEANNE SOCIAL SECURITY NO. 493-50-6507

DATE ISSUED 08/14/72 (Mo. Day Yr.)

VALID FROM 07/01/72 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	
	BS	72	ED

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE		CERTIFICATE CODE	
ELEM	ELEM	02	47

SUBJECT OR SERVICE	CERTIFICATE CODE

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void. An official list of certificate abbreviations and code numbers is shown on the reverse side of this certificate.

Commissioner of Education

212

[redacted], Jeanne 80994
Name Student No.
September 23, 1946 1964
Date of Birth Year of Graduation from H.S.
Webster Groves High Webster Groves, Mo.
Name of High School Town State

Eng. 4	Journalism	Speech	
Algebra 1	Geometry	Trigonometry	
Amer. History 1	Other History	Social Studies 1 3/4	
Gen. Science	Biology 1	Chemistry	Physics
French	German	Latin	Spanish 4
Commercial	Home Econ.	Art	Music 1
		Other Units 1½	

Dept.	No.	Title	Semester Hours	G.	
[redacted]		Meramec Community College*			
		Intro. to Bus. Adm.	3	C	
		Shorthand	3	D	
		Engl. Comp.	3	C	
		Gen. Biology	4	C	
		Prin. of Econ.	3	C	
		Accounting	3	D	
		Engl. Comp.	3	C	
		Alg. & Trig.	5	D	
		Prin. of Econ.	3	C	
		*Credit must be validated			
		Credit validated 1/3[illegible]			
THE UNIVERSITY OF KANSAS					
FALL	1965	1A 80994			
ENGL	3	COMPOSITION & LIT	3	B	
GEOG	6	FUND OF GEOGRAPHY	5	C	
MATH	11	PROBLTY & MATRICES	3	C	
SOC	1	ELEM OF SOCIOLOGY	3	C	
~~000.0~~ 030.0	014.0	014.0 017.0 1.21	4		~~014.0~~ 044.0
SPRING	1966	2A 80994			
ANTH	1	HUMAN ORIGINS	3	C	
HIST	7	HISTORY OF THE U S	5	D	
PSYC	1	GENERAL PSYCHOLOGY	3	C	
SPCH	1	FUNDMNTL OF SPEECH	2	C	

213

W C		W C PROG DISCUSS I		1	B	
~~000.0~~ 030.0	028.0	028.0 027.0		14		056.0
FALL 1966		3A 80994				
ANTH 52		MAN AND CULTURE		3	D	
ENGL 9		INTRODUCT TO NOVEL		3	C	
HDFL 15		INTR CHLD BEHVCOLY		4	A	
PSYC 156		MOTIVATION		3	C	
W C		WC PROG DISCUSS II		1		
~~000.0~~ 030.0	042.0	042.0 046.0		14		
SPRING 1967		3D 80994				
EDUC 50		EDUCTNL PSYCHOLOGY		3	B	
EDUC 51		MUS ELEM SCH TEACH		3	C	
HDFL 82		HEALTH OF FAMILY		2	C	
MATH 9		MODERN ELEM MATH I		3	C	
PSYC 163		PSYCH OF ADOLESCENT		3	C	
~~000.0~~ 030.0	056.0	056.0 060.0		14		
FALL 1967		3D 80994				
BOT 61		TREES AND SHRUBS		3	C	
EDUC 54		INTRO EDUC MEASUREMENT		2	C	
EDUC 55		ART ELEM SCH TEACH		3	C	
ENGL 66		LITER FOR CHILDREN		3	B	
ENGL 87		INTRO ENGLISH LANG		3	C	
030.0	070.0	070.0 077.0		14		100.0

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Office of the Registrar
THE UNIVERSITY OF KANSAS
Lawrence, Kansas

214

Dept.	No.	Title	Semester Hours	G.	
SPRING 1968		4D 80994			
EDUC	62	TCH SOC STD EL SCH	2	B	
EDUC	63	TCH MATHSC EL SCH	3	C	
EDUC	64	TCH READ ELEM SCH	3	C	
GEOL	1	PHYSICAL GEOLOGY	5	C	
POLS	501	PRIN OF GOVERNMENT	3	C	
030.0	086.0	086.0 095.0 1.10	16		116.0
FALL 1968		4D 80994			
EDUC	52	INTRO SCHOOL ADMIN	2	C	
EDUC	85	STUD TCHG ELEM SCH	8	B	
EDUC	93	THE MODRN ELEM SCH	2	A	
SOC	96	MODERN SOC PRAC I	2	B	
SOC	97	MODERN SOC PRAC II	2	B	
W C	FRSC	W CIV EXAM 11JAN69	(2)	F	
030.0	104.0	102.0 125.0 1.20	16		132.0

Office of the Registrar
THE UNIVERSITY OF KANSAS
Lawrence, Kansas
PERMANENT RECORD

Stu. 080994 Page 2

INSTITUTIONAL RECOMMENDATION

This student has satisfactorily completed the regular NCATE accredited program of the University of Kansas for the preparation of teachers, has met all other standards of the University which are required for full recommendation for teaching and is specifically prepared to teach at the level indicated and in the subject field(s) indicated.

DALE P. SCANNELL
Dean, School of Education

Level: Elementary ☑ Secondary ☐

SUBJECT FIELD
Elementary Education

215

573

Degrees Awarded	Major	Date
Bachelor of Science in Education	Elementary Education	June 1, 1973

132 hrs

This is an Official Transcript if impressed with the seal of

The University of Kansas

William L. Daley
Registrar
by

7-17-73
Date

Address any questions about this transcript to the Registrar.

216

PLAINTIFF'S EXHIBIT 2 – VOLUME IX

217

FOR PERSONNEL OFFICE USE ONLY	
Received	MAR 20 1973
Acknowledge	
Req. Credentials	
Set Interview	
Interview Date	21 1973
Action	

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT'S USE ONLY	
Date	5-2-73
Assignment	5th
Building	Hazelwood
Salary	8,145
Signature	[illegible]

11: 02

I. PERSONAL

Date March 10 1973

Soc. Security No. 206-12-6047

Mr. Tighe (Last Name) Stephen (First Name) Edmond (Middle Name)

Present address 210 Carroll St. Hunt'sdale, Pa. (Street) (City) (State) 15431 (Zip Code) 253-1891 (Tele No.)

After July 1 Permanent address Georgetown Apt. Webster Groves Mo (Street) (City) (State) (Zip Code) (Tele No.)

Position desired: 822 B-1 Larkhill Drive, St. Louis 63119 961-2819

Elementary Level 6th, 5th, 4th (Grade) (List in Priority)

Junior or Senior High School (Subjects) (other)

Other Positions

Date of Birth Jan. 5, 1949 Height 5'9" Weight: 175#

Married yes No.of Children None Wife or Husband, living? yes Divorced ____

Separated ____ Number of persons wholly dependent upon you for support 2

Physical Defects (a) Sight None (b) Hearing None (c) Other Defects None

Condition of health for past two years Excellent

With what Community Organizations are you associated? Missy Softball Program in the Summer.

In what recreations do you engage? Outdoor Hunting, Fishing, Baseball, Tennis, Golf

Indoor Basketball

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? Yes, As a Member of the Boy Scouts

Are you left handed? ✓ or right handed? ____

Would you arrange for a personal interview? Yes

Military Status N.G.

218

II. EDUCATION AND PROFESSIONAL TRAINING

High School Honesdale High Address Honesdale, Pa Total Units 13

Diploma Yes / No ____ Dates of Attendance 1962-1966

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Mansfield State Mansfield, Pa	1967-71	BS	Elem Ed	52	7	128
Maryland College Salisbury, Md	1971-75	—	Elem Ed	9	—	9
Grand Total Credits			Elem Ed	52	7	137

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☑ No ☐

Elem. 2 Yr. ☐ Life ☑ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State New York - Penna

NO

Have you ever had a teaching certificate revoked? If so, explain with attached statement.

219

Give last date in school Jan 29 1973 Do you plan to continue graduate work? yes

If so, in what field? Elem Ed (Guid) Place St Louis U

Date Available for employment July, 1973

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
Narrowsburg Central School Narrowsburg, N.Y.	6	1971-73	2	30	$8500.

Total years experience in Elementary Schools? 2 Junior High School? —

Senior High School? —. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 4 & 6 Subject Area (if applicable) —

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office

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14

V. GENERAL FACTS

Have you failed of re-election to a teaching position? No Where ? _____

If yes, explain with attached statement. _____

Why do you wish to leave your present position? or
Why do you wish to return to teaching? Being Married. Wife is Student — in med school

Why do you wish to teach here? Juv. School District has a Good Reputation

What salary are you receiving now? $8500. What salary do you expect to receive here? 9-10

VI. PROFESSIONAL GROWTH

What professional magazines do you read? Instructor, Reading Teacher

What books have you read during the past year? Catch 22, Bury My Heart — Wounded Knee

Of what professional organizations are you a member? N.Y. State Teachers C...

What professional recognition have you had? —

Extent of travel —

221

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? Trombone

Applicant's comment concerning the retention of children in primary grades Dislike only if ... does not Provide a Remedial Aid tutorial program or Summer Pro... to Aid Stu...

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? I have Coached Junior Varsity Basketball for the last two years - Plays

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction yes - 4th, 5th Individualized Instruction Vineland, N.J.

Audio Visual Aids yes - Course - Montclair State College

Programmed Instruction yes Do certain subject areas such as ... Cozart Bus...

Initial Teaching Alphabet (ita) Not really familiar with the program

Behavioral (measurable) Objectives yes Course - Evaluative Techniques - College of N.J. M.S.C.

145

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SECTION IX., CONT.

Differentiated Staffing yes - Student Teaching - English and Math - 4th gr. level

Modern Mathematics yes Course - Teaching Mod. Math - Dyer Exp.

Ability Grouping (Reading) yes - Course - Teaching Reading - Dyer Exp.

Team Teaching None

Non-Graded yes - Reading & Math 4, 5, 6 - Vineland - School

Group Guidance None

Supervised Study yes - Individual areas of Social Studies Science

Please comment on any other special training and/or experience(s) which you have had.

None

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X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality, scholarship and teaching ability.)

Name	Address	Official Position
Joseph Silker	Narrowsburg, N.Y	Principal
Thomas Daltycunde	Honesdale, Pa	Teacher
Kathleen Egall	Hawley, Pa	Teacher
Marie Schalck	Narrowsburg, N.Y	Teacher
James Walsh	New Milford, Pa	Teacher

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE Mar. 10, 1973 SIGNATURE Stephen E. Tighe

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy w/application
1 copy for Principal

Name of applicant: (Miss) (Mrs.) (Mr.) Stephen E. Tighe

Degree(s) held: X Date 1971 From Mansfied State, Mansfield, Pa.
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: 6th grade
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities		X		
2. Personal appearance and grooming	X			
3. Quality of voice and expression	X			
4. Poise, self-control, confidence	X			
5. Personality	X			
6. Attitude toward profession		X		
7. Appreciates the significance of the educational code of ethics		X		
8. Expresses a spirit of mutual respect		X		

New ☐ Former ☐ : Reason for termination: Resignation ☐ , Leave: Maternity ☐

Advanced Study ☐ , Medical ☐ , Other (Specify): _____
Additional comments or evaluation statement:

XXXX Recommended for 6th grade (Position) at Charbonier (School).

☐ Recommended - No vacancy at my school.
☐ Not recommended

_____ (Principal) 8-2-73 (Date)

Recommended for: 4th Gr (Position) Charbonier (School) 1973-74

Years of creditable experience _____ _____ (Salary)

Regular ☐
Pro-rated ☐

Further certification required: No ☐
Yes ☐

If yes, explain:

J. E. Eblen
Elementary Coordinator
8-21-73

Effective date of employment (if other than the beginning of school term) _____

Rev: 3-19-71

14?

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED TIGHE STEPHEN E SOCIAL SECURITY NO. 206-38-6047

DATE ISSUED 11/23/71 (Mo. Day Yr.)

VALID FROM 07/01/71 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

Degree	Yr.	If in Ed.
BS	71	ED

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
ELEM	02	47
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

SUBJECT OR SERVICE	CERTIFICATE CODE	
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

Arthur L. Walkup
Commissioner of Education

227

Present address: 210 Carroll St.
Honesdale, Pa.

MANSFIELD STATE COLLEGE --

STUDENT'S NAME Stephen Edmund Tighe January 5, 1949
Home Address 310 16th Street, Honesdale, Pa. (Birth Date)

Sec. Sch. Honesdale Jr. Sr. High School 1966 (Graduated)
at Honesdale, Penna.

ENTRANCE Engl: UNITS Soc. St: Math:

2nd Sem 19 66 - 67	Hrs.	CR	GR	QP
English 1	3	3	C	6
Bonds of Speech	3	3	C	6
Man & Bio World	3	4	C	8
World Civiliz 2	3	3	C	6
Child Development	3	3	C	6
Health	2	1	C	2
Phy. Educ. 2	2	0	S	0
Orientation	1	0	S	0
		17		

2nd Sem. 19 67 - 68	Hrs.	CR	GR	QP
Lit West Wrld 2	3	3	C	6
Genl Psychology	3	3	C	6
Physical Geog.	3	3	C	6
Hist U.S. & Pa. 2	3	3	B	9
Intro to Music	3	2	B	6
Music for Elem Gds	2	1	B	3
Phys. Educ. 1	2	0	S	0
		15		

1st Sem. 19 67 - 68	Hrs.	CR	GR	QP
English 2	3	3	C	6
Intro to Art	3	2	B	6
Fund Conc Math 1	3	3	C	6
Cultural Geog	3	3	B	9
Wrld Civiliz 1	3	3	C	6
Hist U.S. & Pa. 1	3	3	C	6
Phys. Educ. 3	2	0	S	0
		17		

1st Sem. 19 68 - 69	Hrs.	CR	GR	QP
Lit West Wrld 1	3	3	C	6
Phy Sci for Elem 1	4	3	D	3
Educ Psychology	3	3	C	6
Geog U.S.& Canada	3	3	C	6
Physical Ed. 4	2	1	C	2
Tchg Music Elem Gds	3	2	C	4
		15		

GRADING SYSTEM

GRADE	Q.P.	GRADE	Q.P.
A (Excellent)	4	D (Passing)	1
B (Superior)	3	F (Failing)	0
C (Average)	2	E (Incomplete)	

WP — Withdrew passing
WF — Withdrew failing
S — Satisfactory U — Unsatisfactory
Aud. — Audited

Quality point average of 2 required for graduation.

ADVANCED STANDING: College

CUMULATIVE SUMMARY: Sem. Hrs. & Quality

DATE	5/67	1/68	5/68	1/69	5/69
S. HRS. SCHEDULED	17	34	49	64	79
S. HRS. EARNED	17	34	49	64	79
QUAL. PTS.	34	73	109	136	172
QUAL. PT. AV.	2.00	2.14	2.22	2.12	2.17
DEAN'S LIST					

Tighe (Last Name) Edmund (Middle) Stephen (First)

Degree awarded: B.S. in Educ
January 29,

MANSFIELD, PENNSYLVANIA — at candidate's request

CURRICULUM Elementary

(Place of Birth) Date Admitted January 26, 1967

Bio: Chem: Phys: Gen. Sci: Other:

Langs:

2nd Sem. 19 63 - 69	Hrs.	CR	GR	QP
Phy Sci for Elem 2	4	3	C	6
Prin of Supervision	3	3	B	9
Tchg Art Elem Gds	4	3	B	9
Methods 2 & Partic	4	4	C	8
Audio Visual Commun	3	2	C	4
		15		

1st Sem. 19 69 - 70	Hrs.	CR	GR	QP
Prin Sociology	3	3	C	6
Children's Lit	3	3	B	9
Teaching Reading	3	3	B	9
Tchg Arithmetic	3	3	B	9
Methods 1	4	4	B	12
Eval Techniques	2	2	B	6
		18		

2nd Sem. 19 69 - 70	Hrs.	CR	GR	QP
Lab Tech Elem Sch	2	2	A	8
Human Growth & Devel	3	3	C	6
Prof Sp Lang Impl				
Sch Law	2	2	A	8
Europe 20th Cent	3	3	C	6
Hist Mod Germany	3	3	B	9
Hist & Phil of Ed	3	3	B	9
Int Except Child	3	3	C	6
		19		

1st Sem. 19 70 - 71	Hrs.	CR	GR	QP
Student Teaching	30	12	B	36
		12		
		12 Total		

ACCREDITED BY
NATIONAL COUNCIL FOR
ACCREDITATION OF TEACHER
EDUCATION, WASHINGTON, D.C.

Sem. Hrs.

Pts.	Total required for degree:	128 S. H.
1/70	5/70 1/71	
97	11[illegible] 123	
97	116 128	
223	273 309	
2.29	[illegible].35 2.41	

Certified correct copy of record of person named above

Marie Myers Registrar

Mansfield State College
Mansfield, Pennsylvania

Date NOV 10 1971

Certified in: Elementary Certif. No Type 61
1971 Date: January 1971

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FOR PERSONNEL OFFICE USE ONLY	
Received	MAR 1 6 1972
Acknowledge	MAR 1 6 1972
Req. Credentials	
Set Interview	
Interview Date	[illegible]
Action	[illegible]

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

FOR SUPERINTENDENT'S USE ONLY	
Date	3-14-72
Assignment	[illegible]
Building	[illegible]
Salary	[illegible]
Signature	[illegible]

APPLICATION FOR TEACHING POSITION

Let 9:00 - 3-24-72 - Mr Ford

I. PERSONAL

Date 3-11-72

Soc. Security No. [illegible]

Mr. [illegible] (Last Name) [illegible] (First Name) [illegible] (Middle Name)

Present address [illegible] (Street) [illegible] (City) [illegible] (State) [illegible] (Zip Code) [illegible] (Tele. No.)

Permanent address [illegible] (Street) [illegible] (City) [illegible] (State) [illegible] (Zip Code) [illegible] (Tele. No.)

Position desired:

Elementary Level [illegible] (Grade) (List in Priority) [illegible] (other)

Junior or Senior High School [illegible] (Subjects)

Other Positions [illegible]

Date of Birth [illegible] Height [illegible] Weight [illegible]

Married [illegible] No.of Children [illegible] Wife or Husband, living? [illegible] Divorced [illegible]

Separated [illegible] Number of persons wholly dependent upon you for support [illegible]

Physical Defects (a) Sight [illegible] (b) Hearing [illegible] (c) Other Defects [illegible]

Condition of health for past two years [illegible]

With what Community Organizations are you associated? [illegible]

[illegible]

In what recreations do you engage? Outdoor [illegible]

Indoor [illegible]

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? [illegible]

[illegible]

Are you left handed? [illegible] or right handed? [illegible]

Would you arrange for a personal interview? [illegible]

Military Status [illegible]

22[illegible]

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II. EDUCATION AND PROFESSIONAL TRAINING

High School [illegible] Address [illegible] Total Units [illegible]

Diploma (Yes / No) _____ Dates of Attendance 1963 - 1967

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Sem. Credits
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]					
Grand Total Credits						

Please mark appropriate boxes: IN AUG 1972

Do you hold a certificate valid in Missouri? Yes ☐ No ☐

Elem. 2 Yr. ☐ Life ☒ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State NONE

Have you ever had a teaching certificate revoked? If so, explain with attached statement. NO

232

Give last date in school 1972 Do you plan to continue graduate work? ____

If so, in what field? _____ Place _____

Date Available for employment AUG 1972 - [illegible]

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary

Total years experience in Elementary Schools? [illegible] Junior High School? ____

Senior High School? ____. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 4 Subject Area (if applicable) ____

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

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V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? _____

If yes, explain with attached statement. _____

Why do you wish to leave your present position? or

Why do you wish to return to teaching? I'D LIKE TO TEACH TO BE ... TO DO

THIS BY ... I'D LIKE ... IN EDUCATION

Why do you wish to teach here? I FEEL THAT IT IS A GOOD DISTRICT ... WITH TOP...

What salary are you receiving now? ... What salary do you expect to receive here _____

VI. PROFESSIONAL GROWTH

What professional magazines do you read? ... TRAINER, WISC. - DUKE

TEACHER, I DON'T ... BOOK AND ... OF

What books have you read during the past year? "BLOOM'S TAXONOMY", ...

"POWDERED" DEVELOPMENTAL ... & "MEDICAL ART

"HANDBOOK FOR ... TEACHING"

Of what professional organizations are you a member? NONE - I WAS ... TIME

... MILITARY ...

What professional recognition have you had? _____

Extent of travel ... ...

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? _____

Applicant's comment concerning the retention of children in primary grades _____

I ... WITH THE ... OF THE ... AT

AND ... THEM ... TIME ...

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITION

List activities you can direct? _____

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction _____

Audio Visual Aids _____

Programmed Instruction _____

Initial Teaching Alphabet (ita) _____

Behavioral (measurable) Objectives _____

BEST COPY AVAILABLE

SECTION IX., CONT.

Differentiated Staffing [illegible]

Modern Mathematics [illegible]

Ability Grouping (Reading) [illegible]

Team Teaching [illegible]

Non-Graded [illegible]

Group Guidance [illegible]

Supervised Study [illegible]

Please comment on any other special training and/or experience(s) which you have had.

[illegible]

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality, scholarship and teaching ability.)

Name	Address	Official Position
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible] 788-0013	[illegible]	[illegible]
DR. T. [illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

[illegible]

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE 2-21-72 SIGNATURE [illegible]

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy w/application
1 copy for Principal

Name of applicant: ~~(Miss)~~ (Mrs.) ~~(Mr.)~~ TROST, VON CLOEDT MADONNA ANN

Degree(s) held: B.S. Date 72 From MO. U. ST. LOUIS
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: 6
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities	X			
2. Personal appearance and grooming	X			
3. Quality of voice and expression	X			
4. Poise, self-control, confidence	X			
5. Personality	X			
6. Attitude toward profession	X			
7. Appreciates the significance of the educational code of ethics	X			
8. Expresses a spirit of mutual respect	X			

New [X] Former [ ] : Reason for termination: Resignation [ ], Leave: Maternity [ ]
Advanced Study [ ], Medical [ ], Other (Specify): _____
Additional comments or evaluation statement:

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[X] Recommended for 6 TH GRADE at ARMSTRONG SCHOOL
Position School

[ ] Recommended - No vacancy at my school.
[ ] Not recommended

Edward H Trost 7-3-72
Principal

Recommended for: Gr. 6 Armstrong 1972-73
Position School

Years of creditable experience _____ _____
Salary

Regular [X]
Pro-rated [ ]

Further certification required: No [ ]
Yes [ ] *

If yes, explain: Pending graduation

J E Baker
Elementary Coordinator
4-10-72

Effective date of employment (if other than the beginning of school term): _____

Rev: 3-19-71

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...225

STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED TROST MADONNA A

SOCIAL SECURITY NO. 497-52-6566

DATE ISSUED 08/01/72 (Mo. Day Yr.)

VALID FROM 07/01/72 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	Yr. in Ed.	
	BS	[illegible]	ED	UNIV MO STL

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
ELEM	03	47

SUBJECT OR SERVICE	CERTIFICATE CODE	

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

An official list of certificate abbreviations and code numbers is shown on the reverse side of the certificate.

Commissioner of Education

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PERMANENT RECORD CARD

University of Missouri
AT ST. LOUIS
DIRECTOR OF ADMISSIONS

Cloedt, Madonna Ann
(NAME OF STUDENT)

Julius Von Cloedt, Jr.
(PARENT OR GUARDIAN)

7700 Woodstock St. Louis, Missouri 63135
4715 Nebbins Lane St. Louis Missouri 63121
(PERMANENT ADDRESS)

(ADDRESS)

PROBATION (SCH) ☐ DATE OF BIRTH 11-24-1948 PLACE OF BIRTH St. Louis, Missouri

ENTRANCE CREDITS

ADMITTED TO EVENING COLLEGE DATE Feb. 1968
CREDITS FROM Incarnate Word CONDITION
St. Louis, Missouri GRAD June 1967
ADMITTED TO SCHOOL OF EDUCATION DATE Feb. 1971

ADMITTED TO COLLEGE OF ARTS & SCIENCE DATE Feb. 1965
ADMITTED TO DATE
ADMITTED TO DATE
DEGREE
DATE

UNIVERSITY CREDITS

GRADING SYSTEM CODE | ABCDF 6-DELAYED, 8-EXCUSED | MIL. P.E.

STUDENT NUMBER	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS	GRADE	CREDIT HOURS GRANTED	REMARKS
677603	LITERARY TYPES	12	W68	3	C	3	
	AMERICAN CIV	4	W68	3	C	3	
	BASIC ALGEBRA	03	W68	3	B	3	
677603	COLLEGE ALGEBRA	10	S68	3	B	3	
677603	PRINCIPLES I ECON	50	F68	3	C	3	
	COMPOSITION ENGLISH	10	F68	3	C	3	
	ELE TRANSCEN FUNCT	11	F68	3	B	3	

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677603	AMERICAN CIVILIZ	3	W69	3		B	3	
	ANAL GEOM CAL I	80	W69	5		D		
	HUMAN ORIGINS	10	W69	3		D	3	
677603	PRIN OF ECON 2	51	S69	3		C	3	
	MAJOR QUES IN PHILOS	50	S69	3		C	3	
677603	SURVEY CALCULUS	101	F69	4		D	4	
	GENERAL BIOLOGY	1	F69	3		D	3	
	FUNDMTL FINAN ACCT	140	F69	3		F		
	MASTERPIECES OF ART	1	F69	3		B	3	
677603	PLACED ON SCHOLASTIC PROBATION - JANUARY 27,1970							2/25/70
677603	HIST OF WESTERN ART	102	W70	3		A	3	
	ART ACTIV ELEM SCH	139	W70	3		B	3	
	AMER LITERATURE II	172	W70	3		B	3	
	WORLD REGIONS	102	W70	3		D	3	
677603	REMOVED FROM SCHOLASTIC PROBATION - JULY 1,1970							7/23/70
677603	STRUC MATH SYSTEM I	50	S70	3		D	3	
	APPROACHES TO ETHICS	101	S70	3		D	3	
677603	GENERAL PSYCHOLOGY	1	F70	3		P	3	
	GOVT IN MOD SOCIETY	11	F70	3		P	3	
	SCHOOL IN CONTEM SOC	101	F70	3		C	3	
	EFFECTIVE SPEAKING	101	F70	3		D	3	
	PE ACTIV ELE SCH	155	F70	3		C	3	
677603	PLACED ON SCHOLASTIC PROBATION - JANUARY 28,1971							2/24/71

(OVER)

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Trost
Von Ehrat, Madonna Ann

	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS			CREDIT HOURS EARNED	REMARKS
677603	GEN PSYCHOLOGY II	2	W71	3		D	3	
	CHILD LIT & LANG ART	150	W71	3		B	3	
	MEDIEVAL ART	310	W71	3		C	3	
	ELEM SCHL ORGANIZTN	140	W71	3		B	3	
	INTRO THRY MUSIC	134	W71	2		C	2	
677603	REMOVED FROM SCHOLASTIC PROBATION - JUNE 5,1971							6/25/71
677603	TCHG SOC STDIES ELEM	152	S71	3		A	3	
	GENERAL GEOLOGY	1	S71	4		B	4	
	CHILD PSYCHOLOGY	270	S71	3		P	3	
677603	TCHG SCI ELE SCH	151	F71	3		A	3	
	TCHG MATH ELE SCH	153	F71	3		B	3	
	PSYCH TCHG&LEARNING	302	F71	3		A	3	
	TCHG RDNG ELEM SCH	325	F71	3		A	3	
	ELEM SCHOOL MUSIC	137	F71	2		B	2	
677603	ELEM STUDENT TEACHNG	251	W72	6		A	6	
	ELEMNTS HEALTH EDUC	110	W72	3		A	3	
677603	GENERAL BIOLOGY LAB 13	3	S72	2		P	2	
	GOV IN MOD SOCIETY 1 62	11	S72	3		P	3	

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DEGREES AND CERTIFICATES	
B.S. in Education - August 11, 1972	

FOR PERSONNEL OFFICE USE ONLY

Received

Reg. Cards Rec'd

1st Interview

Interview Date

Action

HAZEL[illegible] SCHOOL DISTRICT

APPLICAT[illegible]

FOR SUPERVISOR

Type

Assignment

Start Date

Salary

Signature

I. PERSONAL

Date January 30, 197[illegible]

Soc. Security No. 4[illegible]

M[illegible] Faye [illegible]
(Last Name) (First Name) (Middle Name)

Present address [illegible] [illegible] [illegible] [illegible]
(Street) (City) (State) (Zip Code) (Tele No.)

Permanent address [illegible]
(Street) (City) (State) (Zip Code) (Tele No.)

Position desired: [illegible] St. Louis, Mo. 6310[illegible] 8[illegible]

Elementary Level
(Grade) (List in Priority) (other)

Junior or Senior High School [illegible]
(Subjects)

Other Positions

BEST COPY AVAILABLE

Date of Birth April 28, 1949 Height 6' Weight 170

Married yes No of Children none Wife or Husband, living? yes Divorced —

Separated — Number of persons wholly dependent upon you for support 0

Physical Defects (a) Sight good (b) Hearing good (c) Other Defects none

Condition of health for past two years excellent

With what Community Organizations are you associated? none

In what recreations do you engage? Outdoor yes Indoor reading, bridge

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? yes

Are you left handed? — or right handed? yes

Would you arrange for a personal interview? yes anytime after 3-17 Bob

Military Status 1-A

II EDUCATION AND PROFESSIONAL TRAINING

College Attended	Dates Attended	Degree	Date Degree Received	Semester Hours	Quarter Hours	Grade Points
[illegible]	[illegible]	—	[illegible]	23	23	23
[illegible]	[illegible]	—	[illegible]	16	—	—
Grand Total Credits						

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☒

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☒ No ☐

List any other teaching certificates you may hold and give State Oklahoma Kansas teaching certificate.

Have you ever had a teaching certificate revoked? No If so, explain with attached statement

Give last date in school _____ Do you plan to continue graduate work? I am currently a graduate student

If so, in what field? _____ Place _____

Date Available for employment August 1972

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary

Total years experience in Elementary Schools? none Junior High School? none

Senior High School? none Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 10, 11, 12 Subject Area (if applicable) English

Add by letter any additional information that will give a more complete estimate of your training, experience, character ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

SECTION IX, CONT.

Differentiated Staffing

Modern Mathematics

Team Teaching

Non-Graded

Group Guidance

Supervised Study

Please comment on any other special training and/or experience(s) which you have had.

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
All of my [illegible] are [illegible] in [illegible]	[illegible] 5 years.	[illegible]

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE January 30, 1972 SIGNATURE [signature]

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION FORM

Name of Applicant Gary Vejvoda Date of Interview 4-30-73

Highest Degree Held B.A.? College or University Fort Hays State Colb.

Interview for History (Subject) position at St. Hugh (Name of School)

Indicate below your rating of the applicant by placing a check mark in the appropriate space:

	Superior	Average	Unsatisfactory	Comments
1. Knowledge of and preparation in subject area		✓		
2. Technical knowledge of learning processes and conditions		✓		No reference
3. Knowledge, understanding, and appreciation of children		✓		
4. Skill in expression		✓		
5. Personal appearance and grooming		✓		

6. Poise, self-control, confidence		✓		
7. Attitude and sincerity toward teaching profession		✓		
8. Sense of humor		✓		

Additional comment or evaluation statement: string in World History

Recommended [X] Not recommended for employment [ ] Hold for future consideration [✓]

Position [illegible] Years of Creditable Experience _____

FOR CENTRAL OFFICE USE ONLY

[ ] Contact for employment to begin on

9-1-73
Date

[signature]
Signed

[signature]
Department Chairman

[signature]
Principal

[signature] 309
Coordinator of Secondary Education

Revised 1973

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c

STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED VEJVODA GARY SOCIAL SECURITY NO. 491-50-8232

DATE ISSUED 04/10/72 (Mo. Day Yr.)

VALID FROM 07/01/71 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.
	BA	71	ED

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
SOC ST 7-12	22	66

SUBJECT OR SERVICE	CERTIFICATE CODE	

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

[signature]
Commissioner of Education

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College Record

Dept.	Course	Cl.	Gr	Sem Hrs	Pts
Forest Park Comm. College, St. Louis, Mo.					
	Fall 1967				
Eng	Engl Comp Devel 1		C	3	3
Eng	Dev Reading 2		B	2	4
Math	Mod College Math 1 111		C	3	3
Lang	Elem German 1 101		W	(4)	-
Hist	Western Civ 1 111		A	3	9
	Spring 1968				
Lang	Elem French 1 101		B	4	8
Educ	Prin of Secon 1 101		WP	(3)	-
Hist	American Hist II 102		C	3	3
Hist	West Civ II 112		B	3	6
Psy	Gen Psych 1 201		C	3	3
	Summer 1968				
Eng	English Comp I 101		B	3	6
Pol S	American Gov't Nat'l 101		D	3	0
	Fall 1968				
Eng	English Comp II 102		D	3	0
Lang	Elem French 102		C	4	4
Hist	American Hist I 101		A	3	9
Phil	History of Phil 1 201		B	3	6
	Spring 1969				
Lang	Interm French I 201		D	4	0
Biol	Intro Biology 101		W	(4)	-
Soc	Intro Sociology 100		A	3	9
Psy	Gen Psych II 202		B	3	6
Phil	Hist West Phil 2 202		C	3	3
	Summer 1969				
Soc	American Soc Prob 210		C	3	3
Phil	Intro to Phil 101		B	3	6
60	Sem Hours Accepted on Degree			62	
	F.H.K.S.C.				
491508232	FALL 1969				
PHYS	PHYS SCIENCE 1		C	5	5
HIST	EARLY NATL PER 161		B	3	6
HPER	BEGIN TENNIS 20		B	1	2
POLS	HIST POL THEOR 170		B	3	6
ART	HIST MOD ART 75		D	3	3
15 19	1.26 77 110 1.42			77	
491508232	SPRING 1970				
HPER	BOWLING 3		D	1	
SPCH	FUND OF SPEECH 29		A	3	9
EDUC	FOUND OF EDUC 40		B	3	6
HIST	CONTEMP AM HIS 169		B	3	6
HIST	HIST OF ROME 52		B	3	6
BIOL	GEN BIOLOGY 1		C	3	3
16 30	1.87 93 140 1.50			93	

Dept.	Course	Cl	Gr		Pts
491508232	FALL 1970				
GEOL	OUR GEO ENVRNT 1		C	3	3
HIST	HISTORICL METH 299		C	3	3
ART	HIST ART ANC 20		C	3	3
ENG	INTRO TO LIT 26		C	3	6
HIST	HIST FAR EAST 175		B	1	6
EDUC	HUM GRTH DEVEL 56		C	3	3
18 21	1.16 111 161 1.45				
491508232	SPRING 1971				
EDUC	EDUC PSYCH 90		C	3	3
EDUC	DIR TCH SEC SC 96		A	8	24
EDUC	THE SEC SCHL 94		A	4	12
EDUC	METH SEC EDUC 95		B	2	4
HIST	TCH SEC SOC ST 90		B	2	4
19 47	2.47 130 208 1.60				
491508232	SUMMER 1971				
ECON	INTR ECONOMICS 35		B	3	6
HIST	MIDDLE AGES 158		A	3	9
HIST	HIST OF SPAIN 149		B	3	6
9 21	2.33 139 224 1.64				
	EFFECTIVE FALL 1971 FHKSC CHANGED FROM A 3-POINT TO A 4-POINT GRADE POINT SYSTEM.				
491508232	INTER-1972				
	Read in History				
HIST	(F NIETZSCHE) 255		G	A	4
1 4	4.00 10 37 3.70				
491508232	SPRING 1972				
HIST	EUR INTELL HIS 154		G	A	12
HIST	READ HISTORY 355		G	B	9
HIST	EUROPE SN 1914 156		G	A	12
6 21	3.50 16 58 3.62				

Continued on Page 2

H.S GRADUATE Bishop DuBourg, St. Louis, Mo. '67

Baccalaureate Degree: B.A.	Graduate Degree:	Date
Major History	Major	

Course Numbers:		
1-49 ..... Fr.So.	100-199 .... Jr.Sr.Gr.	Credit in Sem. Hours
50-99 ..... Jr.Sr.	200-299 ..... Sr.Gr.	16 Week Semesters
	300-399 .... Gr. Only	120 Academic Hours
	400-499 ..... 6th Yr.	Required for Degree

Student in good standing unless otherwise indicated.

James V. Kellerman
REGISTRAR

Fort Hays Kansas State College
Hays, Kansas

311

Name Nejvoda Birth Date 29 Apr 1949 Place St. Charles, Mo.
Student's Home Address St. Louis, Mo. Parents Address St. Louis, Mo.

491 50 8232 Record of Gary Francis

Page 1

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Course	Cr.	Gr.	Sem Hrs	Pts	Dept.	Course	Cr	Gr
Summer 1972								
ren Revolutn 157	G	A	3	12				
Sem Mar Intell 395	G	A	3	12				
Thesis 399	G		(5)					

Vajvels

H.S. GRADUATE

Baccalaureate Degree: Date

Major

Graduate Degree: Date

Major

Course Numbers:		
1-49 . . . . . Fr.So.	100-199 . . . . Jr.Sr.Gr.	Credit in Sem. Hours
50-99 . . . . . Jr.Sr.	200-299 . . . . . Sr.Gr.	18 Week Semester
	300-399 . . . . Gr. Only	120 Academic Hours
	400-499 . . . . . 6th Yr.	Required for Degree

Student in good standing unless otherwise indicated.

REGISTRAR James V. Kellerman

Fort Hays Kansas State College

Hays, Kansas

December 4, 1972

Mr. & Mrs. Gary Vajvoda
5745 A Pinkman
St. Louis, Missouri
63109 Phone - 481-2299

Dear Mr. Ward,

I am writing concerning the letter my husband and I received from your office last week. We are both interested in keeping our records activated in your files.

Although I am currently teaching, my husband was unable to find a full time teaching position, and he is currently working for the Board of Education for the St. Louis Public Schools as a Permanent Substitute. We would definitely be interested in coming for an interview in your school district sometime in the near future if you think that there would be a possibility that you would have an opening for the Spring Semester of 1973. We is certified to teach Social Studies in Grades 7-12. We has finished all of his graduate work at Fort Hays Kansas State College in Intellectual History except for his thesis.

Thank you for your consideration.

Mary Jo Vajvoda

BEST COPY AVAILABLE

...during my freshmen school ...school and was ranked by ...all term at Du Bourg. I ...recent Park Community ...College with considerable ...

...obtaining an education in- ...reason that I decided upon ...controversy and exchange of ...education rests.

...life up to this ... and experiences ... of my life, and that of my

An interest in athletics ... years. This interest ... my participation on the ... went on to play college ... College and Fort Hays Kansas State College ... success.

During college, my concern for obtaining an education increased immeasurably. It is for this reason that I decided upon a teaching career, because I enjoy controversy and exchange of ideas upon which the foundation of education rests.

My work experience has included much that will be beneficial to me as a teacher. Aside from my participation in athletics, I have been a counselor for disadvantaged children in a program offered by the Junior College where I was a student. I enjoyed very much working with these young people in this program. It proved to be both an enlightening and informative experience. My present position as the Assistant Manager of a men's dormitory is also an invaluable learning experience. The job entails working in an administrative capacity as well as the involvement on a personal level with the students living in the hall. With such working experience as this, I am sure that my chances of becoming a good teacher have improved considerably.

Sincerely,
Gary Lejeune

Received FEB 2 3 1973
Acknowledge
Req. Credentials
Set Interview
Interview Date
Action

HAZELWOOD SCHOOL DISTRICT
15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

Date
Assignment
Building
Salary
Signature

I. PERSONAL.

Date February 18, 1973

Soc. Security No. 504-42-3626

M. Vincent Jerry Charles
(Last Name) (First Name) (Middle Name)

Present address 6[illegible] Monroe, Apartment 3, Springfield, Missouri [illegible]
(Street) (City) (State) (Zip Code) (Tele No.)

Permanent address same as above
(Street) (City) (State) (Zip Code) (Tele No.)

Position desired

Elementary Level
(Grade) (List in Priority)

Junior or Senior High School Electronics, Junior High Industrial Arts, Sr. High Indus.
(Subjects)

Other Positions
(other)

Date of Birth January 15, 1943 Height 5'5" Weight 145

Married Yes No. of Children none Wife or Husband, living? Divorced

Separated Number of persons wholly dependent upon you for support none

Physical Defects (a) Sight none (b) Hearing none (c) Other Defects none

Condition of health for past two years excellent

With what Community Organizations are you associated? none

In what recreations do you engage? Outdoor tennis, bicycle riding, swimming

Indoor photography, electronic hobbies

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? no

Are you left handed? yes or right handed?

Would you arrange for a personal interview? yes

Military Status 1-A

Dates of Attendance [illegible] Total Units

	Years Attended		Major Specialization	Units In Major	Units In Minor
Grand Total Credits					

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☐

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☒

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State none

Have you ever had a teaching certificate revoked? If so, explain with attached statement no

Date last date in school recently enrolled you plan to continue graduate work? eventually

If so, in what field? no definite plans Place

Date Available for employment summer 1971

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No of Yrs	No. Teachers in System	Salary

Total years experience in Elementary Schools? Junior High School?

Senior High School? Please indicate the grade level and or subject area in which your

student teaching was done. Grade Level Subject Area if applicable Elementary

All the letters and additional information that will give a more complete estimate of your training, experience,

Applications from placement offices should be sent at earliest convenience to Personnel Office

BEST COPY AVAILABLE

Modern Electronics

Basic Electronics

Industrial Electronics

Basic Mathematics

Supervised Study

Please comment on any special training or experience which you have had.

1 semester of [illegible] on electronics instructor.

X. [illegible] REFERENCES

(Give at least five references, including especially superintendent's, principals, and fellow teachers with whom you have taught, who have personal knowledge of your character, personality, scholarship and [illegible] Please write to them at once at the Southwest Missouri [illegible], Springfield, Missouri

Name	Address	Official Position
[illegible]	[illegible]	Head of [illegible] Dept.
[illegible]	[illegible]	[illegible] Principal
[illegible]	[illegible]	[illegible] Principal
[illegible]	[illegible]	[illegible] Supervisor
[illegible]	[illegible]	Personnel [illegible] Supervisor

[illegible]

The statements made herein are true to the best of my knowledge and belief:

DATE [illegible] SIGNATURE _____

(Completed application should be returned to Personnel Office)

[illegible]

1. [illegible] of participation in school [illegible]	✓			
2. [illegible] of learning resources and conditions	✓			
3. [illegible], understanding, and appreciation of children		✓		
4. Skill in expression	✓			
5. Personal appearance and grooming	✓			

270

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6. Poise, self-control, confidence	✓			
7. Attitude and sincerity toward teaching profession	✓			
8. Sense of humor	✓			

Additional comment or evaluation statement: This man appears to be an efficient worker in the area of electricity. He has a neat appearance. He has a neat [illegible]

Recommended [X] Not recommended for employment [ ] Hold for future consideration [ ]

Position Electric. Years of Creditable Experience [illegible]

FOR SCHOOL OFFICE USE ONLY

[ ] Contract for employment to begin on

9-1-73
date

3011

V. Rogers
Superintendent

Lawrence Lichti
Director

E. Allen
Assistant Superintendent

Principal

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City, by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as hereinafter specified, unless such certificate is revoked.

[illegible] TO [illegible] C [illegible] SOCIAL SECURITY NO. [illegible]

DATE ISSUED [illegible]

VALID FROM [illegible] TO [illegible]

Yr.	Hrs.
6.5	72
ED	

PUBLIC SCHOOL SERVICE

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

[illegible] AND/OR CREDITS IN

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than [illegible] and any alteration of the certificate void [illegible]

[illegible]

Commissioner of Education

273

Southwest Missouri State College

[illegible] Vincent, John C. [illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	COMPOSITION ANALY	2	2	B	6	
[illegible]	[illegible]	3	3	A	12	
[illegible]	[illegible] GOLF	1	1	S	3	
[illegible]	[illegible]	6	6		21	

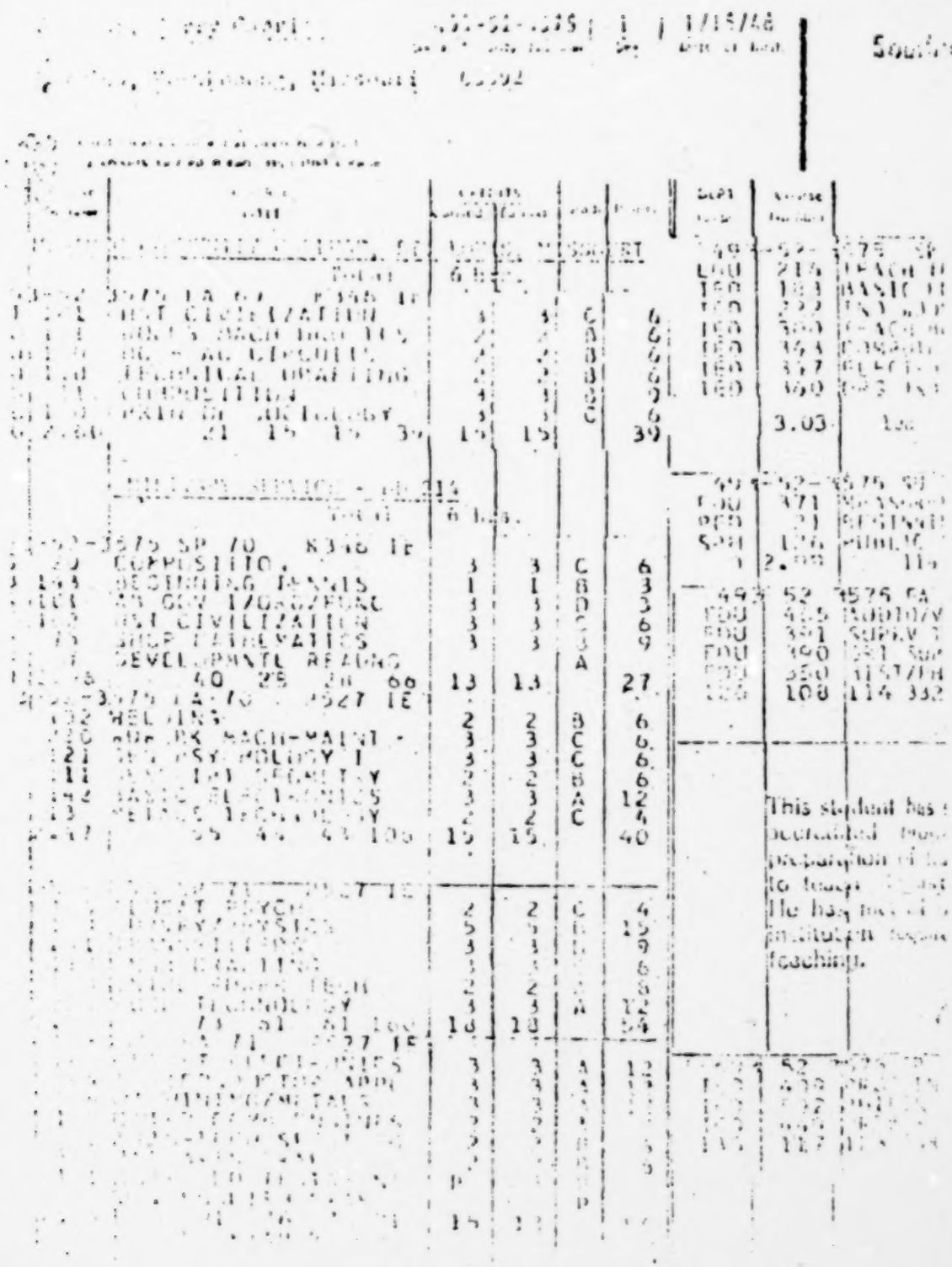
[illegible]

[illegible] INDICATE ACTION BY [illegible]

493-52-3375

[illegible]

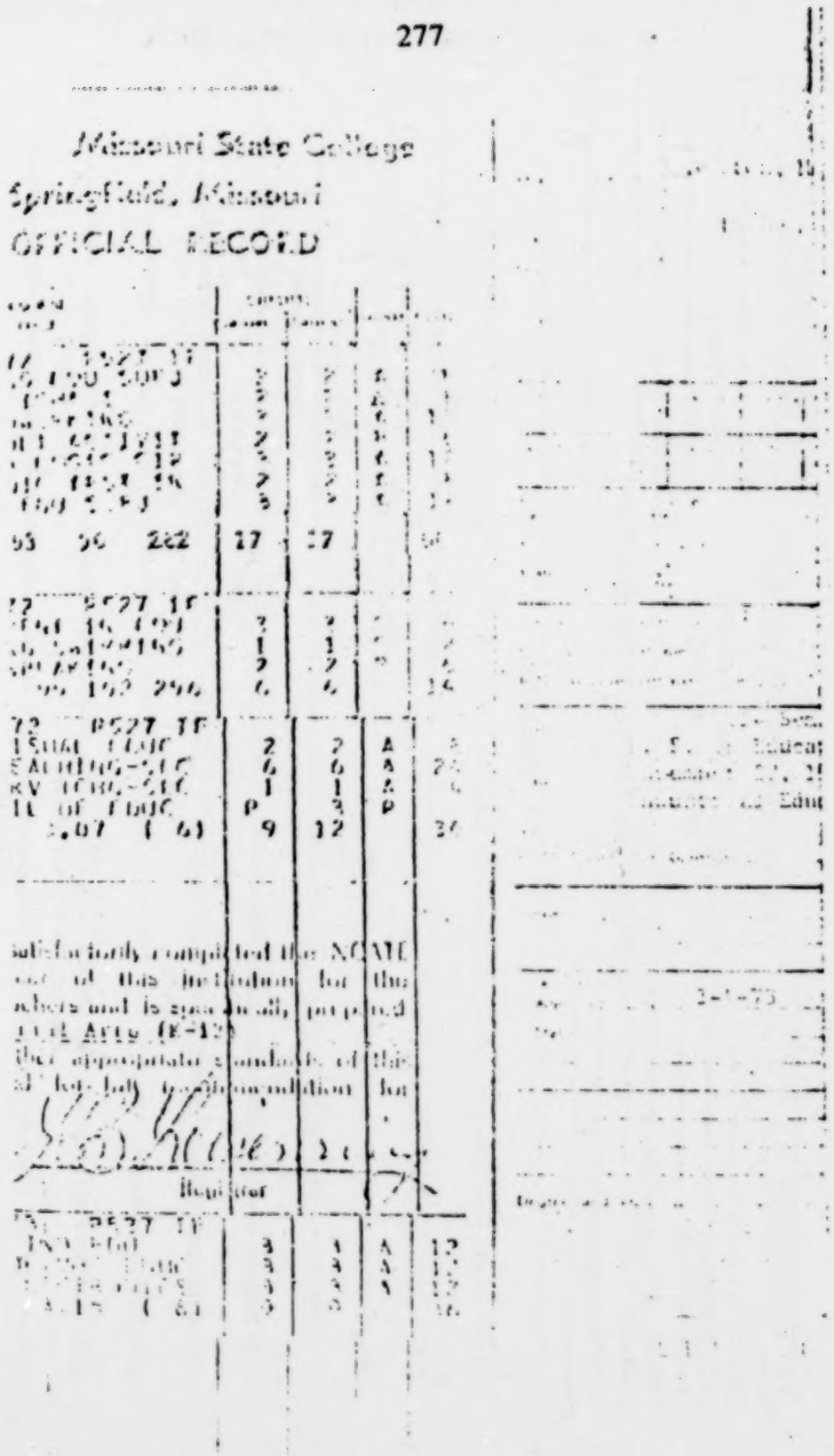
[illegible]



Missouri State College

Springfield, Missouri

OFFICIAL RECORD



FOR PERSONNEL OFFICE USE ONLY
Received
Acknowledge
Req. Credentials
Set Interview
Interview Date 12/15 1 p.m.
Action

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT'S USE ONLY
Date
Assignment
Building
Salary
Signature

I. PERSONAL

Date 8-17-72

Soc. Security No. 491-58-5873

Miss Windish (Last Name) Ruth (First Name) Anne (Middle Name)

Present address 11626 Macrinus Dr. (Street) Florissant (City) Mo (State) 63033 (Zip Code) 831-2732 (Tele. No.)

Permanent address 11626 Macrinus Dr. (Street) Florissant (City) Mo (State) 63033 (Zip Code) 831-2732 (Tele. No.)

Position desired:

Elementary Level 2-3-K-1-4-5-6 (Grade) (List in Priority) (other)

Junior or Senior High School _____ (Subjects)

Other Positions _____

Date of Birth 6-5-50 Height 5'7" Weight 140

Married _____ No. of Children _____ Wife or Husband, living? _____ Divorced _____

Separated _____ Number of persons wholly dependent upon you for support _____

Physical Defects (a) Sight _____ (b) Hearing _____ (c) Other Defects _____

Condition of health for past two years good

With what Community Organizations are you associated? Young Adults

In what recreations do you engage? Outdoor tennis

Indoor bowling, volleyball

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? no

Are you left handed? yes or right handed? _____

Would you arrange for a personal interview? yes

Military Status _____

PLAINTIFF'S EXHIBIT 2 – VOLUME X
278
279

II. EDUCATION AND PROFESSIONAL TRAINING

High School Xavier High School Address 3733 West Pine Blvd Total Units approx. 18

Diploma (Yes) No Dates of Attendance 1964 - 1968

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Univ of Mo Columbia	1968-1972	Education	Elementary		approx 30	12
Univ of Mo St Louis	Jan-Aug 72				3	
Grand Total Credits						12

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☐

Elem. 2 Yr. ☐ Life ☒ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State _____

_____

Have you ever had a teaching certificate revoked? If so, explain with attached statement.

280

Give last date in school May 12, 1972 Do you plan to continue graduate work? Eventually

If so, in what field? _____ Place _____

Date Available for employment August, 1972

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary

Total years experience in Elementary Schools? _____ Junior High School? _____

Senior High School? _____. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level Second Subject Area (if applicable) _____

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

281

V. GENERAL FACTS

Have you [illegible] of re-election to a teaching position? Where? _____

If yes, resume with attached statement: _____

Why do you wish to leave your present position? or

Why do you wish to return to teaching? _____

Why do you wish to teach here? _____

What salary are you receiving now? _____ What salary do you expect to receive here? _____

VI. PROFESSIONAL GROWTH

What professional magazines do you read? _____

What books have you read during the past year? _____

Of what professional organizations are you a member? _____

What professional recognition have you had? _____

Explain if [illegible]: _____

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? None

Applicant's comment concerning the retention of children in primary grades I [illegible]

[illegible]

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? _____

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction [illegible]

Audio Visual Aids [illegible]

Programmed Instruction Programmed Reading

Initial Teaching Alphabet (ita) [illegible]

[illegible]ioral (measurable) Objectives Major Programming [illegible]

302

SECTION IX., CONT.

Differentiated Staffing _____

Modern Mathematics _____

Ability Grouping (Reading) this was done where I student taught

Team Teaching _____

Non-Graded _____

Group Guidance _____

Supervised Study _____

Please comment on any other special training and/or experience(s) which you have had.

_____

_____

_____

_____

_____

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X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Mrs. Carol Wilson	Lusher School 2015 Mullanphy	Second Grade Teacher
Mr. Charles Woods	" "	Principal
Mrs. Barbara Edison	5 Barkeley Square	UMC Supervisor
Mrs. Rochelle James	St. John's Mercy Medical Center 615 S New Ballas Rd. 63141	Instructor - Unit Secretary
Mr. Don DeWitt	11616 Marcinus Dr.	Jr. High teacher - Fox District

285

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE 8-17-72 SIGNATURE Ruth Anne Windish

(Completed application should be returned to Personnel Office)

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy w/application
1 copy for Principal

Name of applicant: (Miss) (~~Mrs.~~) (Mr.) Ruth Ann Windish

Degree(s) held: _____ Date _____ From _____
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: 2nd
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities	✓			
2. Personal appearance and grooming	✓			
3. Quality of voice and expression		✓		
4. Poise, self-control, confidence		✓		
5. Personality	✓			
6. Attitude toward profession		✓		
7. Appreciates the significance of the educational code of ethics		✓		
8. Expresses a spirit of mutual respect		✓		

New ☒ Former ☐ : Reason for termination: Resignation ☐ , Leave: Maternity ☐
Advanced Study ☐ , Medical ☐ , Other (Specify): _____
Additional comments or evaluation statement:

Kgtn Instr. Aide now At Lusher, Clar. McCurdy

☒ Recommended for 2nd at Elm Grove.
Position School

☐ Recommended - No vacancy at my school.
☐ Not recommended

O R Stinson 11-29-72
Principal Date

Recommended for: Gr. 2 Elm Grove
Position School

Years of creditable experience _____ _____ Regular ☐
Salary Pro-rated ☐

Further certification required: No ☐

If yes, explain: Yes ☐

L. E. Coker
Elementary Coordinator

Effective date of employment (if other than the beginning of school term): 12-31-72

Rev: 3-19-71

ALL SUBSTITUTES MUST HAVE A PHYSICAL AND A CHEST X-RAY Will send x-ray in Phys. ✓

This application should be accompanied by a TRANSCRIPT showing a minimum of 60 hours of college credits or a VALID MISSOURI TEACHER'S CERTIFICATE if you have one.

SUBSTITUTE TEACHER APPLICATION Begin 9-18-72

HAZELWOOD SCHOOL DISTRICT
15955 New Halls Ferry Rd.
Florissant, Missouri 63031

NAME Ruth Anne Windish Birth Date 6-5-50

Address 1616 Morrinus Dr (Number & Street) Florissant (City) Mo. (State) 63033 (Zip Code)

Phone 831-2732 Social Security Number 491-58-5873

In case of Emergency Notify Mrs. E J Windish same as above (Name, Address & Phone Number)

Name of Univ. & Colleges Attended Univ. of Mo. at Columbia

Major areas of Study Elem Education Credit

Credit

Credit

Total College Credit 124 hrs Degree Elem Ed. College Univ of Mo Columb Date 5-16-72

Hours in Professional Education Elem. 44 Sec.

Do you have a Valid Missouri Certificate? Yes ✓ No

Life ✓ Temporary Area of Certification

Grade or Subject preferred: 1st Choice 2nd Choice 3rd Choice

Buildings Preferred anywhere in district K-6 primary preferred

Last Place of Employment St John's Mercy Hospital Date present till 8-15-72

Sr M. Marthalane 615 S New Ballas Rd Florissant Mo.
Immediate Supervisor Address City State

Please submit the name, address and telephone number of five people as references:

NAME	ADDRESS	CITY	STATE
Mr Charles Woods	Lusher School 2015 Mullanphy Lane	Florissant	Mo.
Mrs Carol Wilson	"	"	"
Mrs Barbara Edison	#5 Barkley Square	St. Louis	Mo.
Mr. Don DeWitt	1616 Morrinus Drive	Florissant	Mo
Sr M. Marthalane	St. John's Mercy Hospital 615 S. New Ballas Rd.	Creve Coeur	Mo.

Ruth Anne Windish
Signature

8-30-72
Date

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy w/application
1 copy for Principal

Name of applicant: (Miss) (Mrs.) (Mr.) Ruth Windish

Degree(s) held: B.S.Elem.Ed Date 1972 From University of Mo.-Columbia, Mo.
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: 5th level
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities		X		
2. Personal appearance and grooming	X			
3. Quality of voice and expression	X			
4. Poise, self-control, confidence	X			
5. Personality	X			
6. Attitude toward profession	X			
7. Appreciates the significance of the educational code of ethics	X			
8. Expresses a spirit of mutual respect	X			

New ☐ Former ☐ : Reason for termination: Resignation ☐ , Leave: Maternity ☐
Advanced Study ☐ , Medical ☐ , Other (Specify): _____
Additional comments or evaluation statement:

I'd especially recommend this applicant for a primary grade.

☐ Recommended for _____ at _____.
Position School

☒ Recommended - No vacancy at my school.
☐ Not recommended

Louis E. Kelly 11-20-72
Principal Date

Recommended for: _____ _____
Position School

Years of creditable experience _____ _____ Regular ☐
Salary

Further certification required: No ☐ Pro-rated ☐

If yes, explain: Yes ☐

_____
Elementary Coordinator

Effective date of employment (if other than the beginning of school term): _____

Rev: 3-19-71

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy w/application
1 copy for Principal

Name of applicant: (~~Miss~~) (Mrs.) (Mrs) Ruth Windish

Degree(s) held: B.S. Date 72 From Univ. of Mo. St. Louis
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: Instructional Aide - Kdgn.
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities		✓		
2. Personal appearance and grooming		✓		
3. Quality of voice and expression		✓		
4. Poise, self-control, confidence		✓		
5. Personality		✓		
6. Attitude toward profession		✓		
7. Appreciates the significance of the educational code of ethics		✓		
8. Expresses a spirit of mutual respect		✓		

New ☒ Former ☐ : Reason for termination: Resignation ☐ , Leave: Maternity ☐
Advanced Study ☐ , Medical ☐ , Other (Specify): _____
Additional comments or evaluation statement:

☒ Recommended for Kdgn. Inst. Aide at Chesterwood McCandy Tusher.
Position School

☐ Recommended - No vacancy at my school.
☐ Not recommended

H. E. Windsor 1/10/72
Principal Date

Recommended for: Kdgn Instr. Aide Chesterwood-McCandy-Tusher
Position School

4 hrs. 20 min daily
Years of creditable experience _____ _____ Regular ☐
Salary

Further certification required: No ☐ Pro-rated ☐

If yes, explain: Yes ☐

J. C. Elder
Elementary Coordinator

Contact for acceptance.
Effective date of employment (if other than the beginning of school term) 10-12-72
Dell Lun to call Drumpolls for further details.

Rev: 3-19-71

HAZELWOOD SCHOOL DISTRICT
ELEMENTARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Complete in duplicate:
1 copy w/application
1 copy for Principal

Name of applicant: (Miss) ~~(Mrs.)~~ (Mr.) Bobbie Hendrick

Degree(s) held: BS Date _____ From U. Missouty Mo.
College or University

Degree expected: _____ Date _____ From _____

Interviewed for: _____
Position(s)

Indicate below your rating of applicant by placing check mark in proper space:

	Above Average	Average	Below Average	Comment
1. Knowledge of teaching responsibilities		✓		
2. Personal appearance and grooming		✓		
3. Quality of voice and expression				
4. Poise, self-control, confidence				
5. Personality		✓		
6. Attitude toward profession				
7. Appreciates the significance of the educational code of ethics				
8. Expresses a spirit of mutual respect				

New ☒ Former ☐ : Reason for termination: Resignation ☐ , Leave: Maternity ☐
Advanced Study ☐ , Medical ☐ , Other (Specify): _____
Additional comments or evaluation statement:

Student taught at Lashley

☐ Recommended for _____ at _____.
Position School

☒ Recommended - No vacancy at my school.
☐ Not recommended

J. L. Boston 6/72
Principal Date

Recommended for: _____ _____
Position School

Years of creditable experience _____ _____ Regular ☐
Salary Pro-rated ☐

Further certification required: No ☐

If yes, explain: Yes ☐ _____
Elementary Coordinator

Effective date of employment (if other than the beginning of school term): _____

Rev: 3-19-71

FOR PERSONNEL OFFICE USE ONLY	
Received	FEB 1 4 1972
Acknowledge	~~FEB 1 5 1972~~
Req. Credentials	
Set Interview	
Interview Date	2/28 3:20
Action	

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT'S USE ONLY	
Date	12-5-72
Assignment	Uncle 2.
Building	Elm Street.
Salary	Fro as of 12-21-72
Signature	[illegible]

I. PERSONAL

Date 2-4-72

Soc. Security No. 491-58-5873

Miss Windish (Last Name) Ruth (First Name) Anne (Middle Name)

Present address 11626 Macrinus Dr (Street) Florissant (City) Mo. (State) 63033 (Zip Code) 831-2732 (Tele. No.)

Permanent address 11626 Macrinus Dr. (Street) Florissant (City) Mo (State) 63033 (Zip Code) 831-2732 (Tele. No.)

Position desired:

Elementary Level 2-3-K-4-5-6 I omitted first grade since I am left handed. (Grade) (List in Priority) (other)

Junior or Senior High School _____ (Subjects)

Other Positions _____

Date of Birth 6-5-50 Height 5'7" Weight 140

296

Married _____ No.of Children _____ Wife or Husband, living? _____ Divorced _____

Separated _____ Number of persons wholly dependent upon you for support _____

Physical Defects (a) Sight _____ (b) Hearing _____ (c) Other Defects _____

Condition of health for past two years very good

With what Community Organizations are you associated? none

In what recreations do you engage? Outdoor tennis, softball

Indoor volleyball, bowling, basketball

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? no

Are you left handed? yes or right handed? _____

Would you arrange for a personal interview? yes

Military Status —

297

II. EDUCATION AND PROFESSIONAL TRAINING

High School Xavier High School for Girls Address 3733 W. Pine Blvd 63103 Total Units approx. 18

Diploma (Yes) No Dates of Attendance Sept. 1964 - May, 1968

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Mu-Columbia	Sept '68-May '72	May '72	Elem Education	General	29	121
Mu-St. Louis	Jan 70 - May 70	-	Elem Education	General	3	3
Grand Total Credits						121

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☐

Elem. 2 Yr. ☐ Life ☒ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐ I will have one in May '72.

List any other teaching certificates you may hold and give State -

Have you ever had a teaching certificate revoked? If so, explain with attached statement.

298

Give last date in school 5-12-72 Do you plan to continue graduate work? yes - a course at night school

If so, in what field? Elementary Education Place Mu - St. Louis

Date Available for employment Sept. '72

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary

Total years experience in Elementary Schools? _____ Junior High School? _____

Senior High School? _____. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level Second Subject Area (if applicable) _____

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

299

310

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? no
If yes, explain with attached statement. _____

Why do you wish to leave your present position? or
Why do you wish to return to teaching? _____

Why do you wish to teach here? I'm doing my student teaching in this district and have seen favorable comments for teaching in Hazelwood
What salary are you receiving now? _____ What salary do you expect to receive here? starting salary

VI. PROFESSIONAL GROWTH

What professional magazines do you read? Science Teacher, Arithmetic Teacher, Instructor, Grade Teacher

What books have you read during the past year? primarily textbooks for education courses

Of what professional organizations are you a member? none

What professional recognition have you had? none

Extent of travel United States only

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? piano

Applicant's comment concerning the retention of children in primary grades There should be a transitional room for the slow learners where they can advance at their own speed but still be promoted.

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? _____

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction I observed in rooms that individualized math while student teacher.

Audio Visual Aids I took a 3hr. course on the production and operation of audio visual aids

Programmed Instruction In student teaching we are using programmed reading

Initial Teaching Alphabet (ita) This was covered in my Teaching of Reading course.

Behavioral (measurable) Objectives This was covered in my Teaching Social Studies course where we read Mager - Preparing Instructional Objectives.

300

301

SECTION IX., CONT.

Differentiated Staffing _____

Modern Mathematics _____

Ability Grouping (Reading) In student teaching we have two skill groups for reading

Team Teaching _____

Non-Graded _____

Group Guidance _____

Supervised Study _____

Please comment on any other special training and/or experience(s) which you have had.

I feel that an activity time is beneficial to the children. Interest centers are set up on various subjects and for about 35 minutes during each day they are able to work individually on what they are interested in at that time. This was done in the room where I am student teaching and it is working out well.

302

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Mrs Carol Wilson	Lusher School 2015 Mullanphy Lane Florissant Mo 63031	Second Grade Teacher
* Mrs Barbara Folsom	5 Barkley Square St. Louis, Mo 63130	Supervisor - Title I Reading Teachers
Mr Don DeWitt	11616 Macrimus Dr. Florissant Mo 63033	Industrial Arts Teacher - Ritenour District
Mrs. Rochelle James	St John's Mercy Hospital 6535 New Ballas Rd Creve Coeur Mo 63141	Instructor of Unit Secretaries
Mr. Charles Woods	Lusher School 2015 Mullanphy Lane Florissant Mo 63031	Principal - Lusher School

* She will not be able to fill out any forms until March 10th.

All spaces applicable must be completed in full.

303

The statements made herein are true to the best of my knowledge and belief:

DATE 2-4-72 SIGNATURE Ruth Anne Windish

(Completed application should be returned to Personnel Office)

STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED WINDISH RUTH A

SOCIAL SECURITY NO. 491-58-5873

DATE ISSUED 05/22/72 (Mo. Day Yr.)

VALID FROM 07/01/71 (Mo. Day Yr.) TO LIFE (Mo. Day Yr.)

DEGREES	Deg.	Yr.	If in Ed.	
	BS	72	ED	UNIV MO COL

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE	CERTIFICATE CODE	
ELEM ELEM	03	47

SUBJECT OR SERVICE	CERTIFICATE CODE	

COPY FOR SUPERINTENDENT'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void

Commissioner of Education

UNIVERSITY OF MISSOURI

DIRECTOR OF ADMISSIONS
COLUMBIA

PERMANENT RECORD CARD

WINDISH RUTH ANNE
(NAME OF STUDENT)

11526 MACKINUS DR
FLORISSANT MO 63033
(PERMANENT ADDRESS)

RELIGION (ROM) [ ] DATE OF BIRTH 6-05-50

Mr. Edward J. Windish
(PARENT OR GUARDIAN)

X:P (ADDRESS)

PLACE OF BIRTH St. Louis, Missouri

ENTRANCE CREDITS

ADMITTED TO NURSING DATE F-68

CREDITS FROM Xavier High School CONDITION
St. Louis, Missouri GRAD May 1968

ENGLISH	MATH ANALYSIS	LATIN
GENERAL MATH	SOCIAL STUDIES	FRENCH
ALGEBRA	GENERAL SCIENCE	SPANISH
PLANE GEOMETRY	BIOLOGY	GERMAN
SOLID GEOMETRY	CHEMISTRY	OTHER
TRIGONOMETRY	PHYSICS	

ADMITTED TO EDUCATION DATE F-70

ADMITTED TO DATE

ADMITTED TO DATE

DEGREE

DATE

UNIVERSITY CREDITS

GRADING SYSTEM CODE: A=OF 4-DELAYED, B=EXCUSED

MIL. [ ] [ ] [ ] [ ]
P. E. [ ] [ ] [ ] [ ]

STUDENT NUMBER	COURSE	COURSE NUMBER	TERM	NORMAL CREDIT HOURS	GRADE	CREDIT HOURS GRANTED	REMARKS
144856	INTRODUCTORY CHEM	1	F63	5	D	5	
	COMPOSITION ENGLISH	1	F68	3	B	3	
	PH ED FRESHMAN WOMEN	3	F63	1	B	1	
	AMERICAN GOVERNMENT	1	F68	5	C	5	
	GENERAL PSYCHOLOGY	1	F68	3	B	3	
144856	PH ED FRESHMAN WOMEN	4	W69	1	C	1	
	NUTRITION & HEALTH	130	W69	3	C	3	
	INTRO PHILOSOPHY	5	W69	3	C	3	

	GENERAL SOCIOLOGY		1	W69	3		C	3	
	INTRO ZOOLOGY		1	W69	5		C	5	
144856	AMERICAN LITERATURE	3T	175	F69	3		B	3	
	SOC DISORGANIZATION	9D	50	F69	3		C	3	
	ELEMENTARY ANATOMY	1P	201	F69	4		D		
	MED & PUB HLTH MICRO	6Q	205	F69	4		D	4	
144856	LOW GPA REPORTED - NUR								
	PLACED ON SCHOLASTIC PROBATION 01-26-70 (4-01-70)								

University of Missouri at St Louis

W 70	Ele of Health Educ	110			3		C		
	Literary Types	12			3		A		
	World Regions	102			3		B		
	Intro Theory Music	134			2		D		
	Child Psychology	270			3		C		
S 70	Struc Math Systems I	50			3		B		
	Phys Ed Act Elem Sch	155			3		D		
144856	ART ACT ELEM SCH	3E	E118	F70	2		C	2	
	MATH ELEM SCHOOL	3E	E167	F70	2		C	2	
	EDUC PSYCHOLOGY	3P	A102	F70	2		C	2	
	EXPOSITION ENGLISH	3T	60	F70	3		B	3	
	AMERICAN HISTORY	5E	20	F70	5		C	5	
144856	KINDERGART METH MGT	3E	E123	W71	3		C	3	
	LIT IN ELEM SCHOOL	3E	E196	W71	3		C	3	

(OVER)

DEC 1

Gary L. Smith
DIRECTOR OF ADMISSIONS AND STUDENT

ENGLISH PROFICIENCY EXAMINATION PASSED

306

314

144856 Wi sh, n Anne

STUDENT NUMBER	COURSE		COURSE NUMBER	TERM	NORMAL CREDIT HOURS	GRADE		CREDIT HOURS GRANTED	REMARKS
	SCIENCE ELEM SCH	3E	E198	W71	2		A	2	
	ELE SCH MUSIC	3L	J129	W71	2		B	2	
	LIFE & TCHG OF JESUS	8W	122	W71	3		B	3	
	PUBLIC SPEAKING	9J	175	W71	3		C	3	
144856	CHILD STUDY	3E	E122	F71	3		B	3	
	PROD INSTR MEDIA MAT	3E	D371	F71	3		A	3	
	SOC STUDIES ELEM SCH	3E	E369	F71	2		B	2	
	PROB TCHG LANG ARTS	3E	E366	F71	2		A	2	
	TCHG READG ELEM SCHL	3E	E325	F71	3		C	3	
	INTERNATL RELATIONS	7Z	55	F71	3		B	3	
	TERM HRS.- 16.0	TERM GR. PTS.- 50.0			TERM GPA-3.1250				
	CUM. HRS.- 86.0	CUM. GR. PTS.- 202.0			CUM. GPA-2.3488				
144856	INTR EDUC MEAS EVAL	3P	A140	W72	2		B	2	
	STU TCHG ELE SCH	3E	E199	W72	8		A	8	
	SCH ORG ADM ELE TCH	3M	C141	W72	2		B	2	
	INTELLCTL FNDTNS EDU	9E	B353	W72	3		B	3	
	TERM HRS.- 15.0	TERM GR. PTS.- 53.0			TERM GPA-3.5333				
	CUM. HRS.-101.0	CUM. GR. PTS.- 255.0			CUM. GPA-2.5247				

144856 NCATE ACCREDITED-CERTIFICATED TO TEACH:
IN THE ELEMENTARY GRADES + KINDERGARTEN
EFFECTIVE DATE: JUNE, 1972

307

DEGREES AND CERTIFICATES

B.S. in Ed. (Life Cert to Teach)	May 16,1972

FOR PERSONNEL OFFICE USE ONLY	
Received	9-7-72
Acknowledge	
Req. Credentials	
Set Interview	
Interview Date	9/7
Action	Not Recommended

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

FOR SUPERINTENDENT'S USE ONLY	
Date	
Assignment	
Building	
Salary	
Signature	

APPLICATION FOR TEACHING POSITION

I. PERSONAL

Date April 6, 1972

Soc. Security No. 430 56 4581

Mr. Carson (Last Name) Timotheus (First Name) H. (Middle Name)

Present address 3739 N. Drexel Ave. (Street) Indianapolis (City) Indiana (State) 46218 (Zip Code) 545-7901 (Tele. No.)

Permanent address _____ (Street) _____ (City) _____ (State) _____ (Zip Code) _____ (Tele. No.)

Position desired:

Elementary Level _____ (Grade) (List in Priority) _____ (other)

PLAINTIFF'S EXHIBIT 4

Junior or Senior High School English - French - German
(Subjects)

Other Positions

Date of Birth June 8, 1933 Height 6 feet Weight 205 lbs.

Married Yes No.of Children 1 Wife or Husband, living? Yes Divorced

Separated Number of persons wholly dependent upon you for support 2

Physical Defects (a) Sight (b) Hearing (c) Other Defects

Condition of health for past two years Excellent

With what Community Organizations are you associated? Board of Elders of Westlane Christian Church Indpls. Ind.

In what recreations do you engage? Outdoor

Indoor

Have you had experience with such Youth Organizations as Scouts, Campfire, etc?

Are you left handed? Yes or right handed?

Would you arrange for a personal interview? Yes

Military Status 4-D

606

310

II. EDUCATION AND PROFESSIONAL TRAINING

High School Dunbar High School Address Little Rock, Ark. Total Units 32

Diploma Yes Yes Dates of Attendance 1950 - 1952
No

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Butler University	1955-58	AB	Religion, English French ⟹	≥ 30 approx 24	Approx 24	32-42
Purdue University	1962	NDEA Certif	French	9 hrs		56
Indiana University	1963-64		German	14		24
Ind. Central College	1968-70	MA	English, French German		4	42
Grand Total Credits						

311

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes [X] No [ ]

Elem. 2 Yr. [ ] Life [ ] Secondary 2 Yr. [ ] Life [X] K-12 Life [ ]

If not, have you applied for a Missouri Teacher's Certificate? Yes [ ] No [ ]

List any other teaching certificates you may hold and give State NDEA French A-L-M Certificate Indiana

Have you ever had a teaching certificate revoked? If so, explain with attached statement.

Give last date in school June, 1970 Do you plan to continue graduate work? Yes (PHD)

If so, in what field? Humanities Place

Date Available for employment September, 1972

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
Crispus Attucks High School	English, Pilot Russian, French, German	1961-65	4	4,000	
School 41 (Jr. High)	English	1965-66	1		
School 69(Jr. High(Summers)	English, French	1965-66			
Crispus Attucks High School	French, German	1966-68	2		
Thomas Carr Howe High School	French, German	1968-72	4		

Total years experience in Elementary Schools? 0 Junior High School? 1

Senior High School? 9. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 9-12 Subject Area (if applicable) French and Spanish

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

699

312

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? No

If yes, explain with attached statement.

Why do you wish to leave your present position? or

Why do you wish to return to teaching? I am making the St. Louis area my permanent residence. Wife will be working at St. Louis Christian College.

Why do you wish to teach here?

What salary are you receiving now? Approx. $11,500 What salary do you expect to receive here? No less than present salary

VI. PROFESSIONAL GROWTH

What professional magazines do you read? Ind. Teacher;Quinto Lingo;French Review, NEA Journal

What books have you read during the past year? Negro Caravan;World Literature;African Heritage;Antigone by Jean Anouilh; They Came in Chains by Saunders Redding

Of what professional organizations are you a member? ISTA;LEA;Ind. Foreign Language Teachers' Association; English Teachers Club

What professional recognition have you had? Honored for literary achievements (1967) "An Hour with Timotheus Carson"(Attucks H.S.);Special Post Teaching Tenure Evaluation as outstanding teacher (by Mr. Alexander Moore, Attucks Principal)

313

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? harmonica

Applicant's comment concerning the retention of children in primary grades

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct?

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction

Audio Visual Aids

Programmed Instruction

Initial Teaching Alphabet (ita)

Behavioral (measurable) Objectives

SECTION IX., CONT.

Differentiated Staffing

Modern Mathematics

Ability Grouping (Reading)

Team Teaching

Non-Graded

Group Guidance

Supervised Study

Please comment on any other special training and/or experience(s) which you have had.

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
DR. Alexander Moore	Education Center 120 E Walnut Indpls. IND	Curriculum Associate Superintendent
DR. EVERETT SAUTER	Education Center 120 E Walnut Indpls - IND	Supervisor of Curriculum
MRS REGULA LORAND	Education Center 120 E WALNUT INDPLS. IND	Associate Coordinator of Foreign Languages
DR. LAURANNE Sams	9024 Evergreen Indpls IND	Professor of Guidance + Nursing Indiana-Purdue University
REV. Paul BOATMAN	Westlane Christian Church Westlane & Grandview Drive	Minister Westlane Christian Church
MR Thomas Stirling	Thomas Carr Howe High School Indianapolis, Indiana	Principal

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE April 7, 1972 SIGNATURE Timothens H. Carson

(Completed application should be returned to Personnel Office)

611

316

9:30

1-Card

HAZELWOOD SCHOOL DISTRICT
SECONDARY SCHOOL TEACHER INTERVIEW
EVALUATION AND RECOMMENDATION

Name of Applicant Mr. Timothens H. Carson Date of Interview Apr. 7, '72

Highest Degree Held M.A. College or University Indiana Central College

Interview for English (Subject) position at Senior H.S. (Name of School)

Indicate below your rating of the applicant by placing a check mark in the appropriate space:

	Superior	Average	Unsatis-factory	Comments
1. Knowledge of and preparation in subject ares		✓		English - approx 30 Hours - 24.
2. Technical knowledge of learning processes and conditions				
3. Knowledge, understanding, and appreciation of children				
4. Skill in expression		✓		

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5. Personal appearance and grooming	✓			
6. Poise, self-control, confidence		✓		
7. Attitude and sincerity		✓		
8. Sense of humor		✓		

Additional comment or evaluation statement: Is interested in phase elective program.

Recommended ☐ Not recommended for employment ☐

Position English Years of Creditable Experience 5

R D Powell
Department Chairman

Principal

Coordinator of Secondary Education

Revised 1971

State of Indiana

Teacher Training and Licensing Commission of the State Board of Education

TIMOTHEUS H CARSON

This is to certify that the person named hereon, being of good moral character and having met the requirements prescribed by law and the Teacher Training and Licensing Commission of the State Board of Education, is hereby granted

The SECONDARY *Certificate, Professional.*

This certificate, issued by the authority vested in the Division of Teacher Education and Certification of the Office of the State Superintendent of Public Instruction, is valid for the area of endorsement in the public schools of Indiana for Life unless annulled for cause.

Clifford E. Zigrady
STATE DIRECTOR of Teacher Education and Certification

Richard D. Wells
STATE SUPERINTENDENT of Public Instruction

802989

FOLD HERE FOR FRAMING

State of Indiana

PUBLIC SCHOOL TEACHER'S CERTIFICATE
OFFICE OF STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
DIVISION OF TEACHER EDUCATION AND CERTIFICATION
INDIANAPOLIS, INDIANA 46204 802989

NAME (LAST, FIRST, MIDDLE)	IDENTIFICATION (SOCIAL SECURITY NO.)	FEE PAID
CARSON TIMOTHEUS H	430/56/4581	$ 5.00

TYPE	GRADE	BASIS
SECONDARY	PERMANENT	BULLETIN 192

COLLEGE OR STATE*	ACCREDITATION
INDIANA CENTRAL COLLEGE	NCATE

DEGREE	ACTION	EXPIRATION DATE
MASTERS	CONVERSION	LIFE

SERVICE AND ADMINISTRATION

SUBJECT ENDORSEMENTS	COMPETENCY LEVEL
FRENCH	SPECIAL AREA
ENGLISH	SPECIAL AREA
GERMAN	RESTRICTED AREA

FOLD HERE FOR FRAMING

*IF THE HOLDER OF THE CERTIFICATE GRADUATED FROM AN OUT-OF-STATE COLLEGE, ONLY THE STATE IS INDICATED.

RECORDED 7.13 7/6/20
INDIANAPOLIS PUBLIC SCHOOLS
802989

☐ Miss
☐ Mrs.
☒ Mr.

1. Name in full Carson (Last) Timotheus (First) H. (Middle) (Maiden)
2. Home address 3739 N. Drexel Ave., Indpls., Ind. Telephone 545-7901
3. Present address Same Telephone
4. Social Security Number 430-56-4581
5. Date of birth June 8, 1933 Height 6' 0" Weight 205
6. Marital status Married Number of children 1 Ages 5 yrs.
7. Condition of health for past two years Excellent
8. Any defects in sight or hearing None
9. Any other physical defects None
10. Do you hold a certificate valid in Missouri? Elementary: Date of issue Date of expiration
    Secondary Date of issue 8/70 Date of expiration Life
    Subjects certified to teach English, French, German
    Have you ever had a teaching certificate revoked? No

322

11. Give last date in school June, 1970 Do you plan ntinue graduate work? Yes
12. Have you failed of re-election? No Where? --- Why? ---

13. Have you ever been arrested or convicted of a misdemeanor or felony other than a minor traffic violation?
    Please explain. No
14. Why do you wish to leave your present position? Change of Residency requires it
15. When could you begin work here? September, 1972
16. What salary are you receiving? $11,000
17. What salary do you expect to receive?
18. What professional magazines do you read? Indiana Teacher, IEA
19. You are a member of what professional organizations? ISTA, IEA, Foreign Language Teacher's Assn.
20. Elementary Applicants
    Can you teach music? Play the piano? Teach art?
21. Junior or Senior High School Applicants
    Place a circle around any of the following which you are able to direct or coach successfully: Debates, School Plays, Oratorical Contests, Orchestra, Clubs, Basketball, Baseball, Football, Softball, Track, Tennis, Calisthenics, Playground Activities, Swimming, Wrestling, Others: ---

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EDUCATION AND PROFESSIONAL TRAINING

School	Name of Institution	Date of Attendance	Degree or Diploma	Major Subjects	Semester Hours in Major	List Minors Include Sem. Hours	Semester Hours in Education	Total Hours Credit
High School	Horace Mann Senior	1950-1952	Dip.					32
College or University	Butler University	1955-58	AB	English Foreign Lang.		Greek 18hrs approx. 33		27 or more 23
Graduate Work	Indiana University Indiana Central	1968-70	MA	Eng.-Fr. German	24 approx.			French 46 24
Special Work	Purdue University	June-Aug. 1962	NDEA Cert.	ALM French	6 hrs			

(For additional space use reverse side.)

Do you have a set of up-to-date Credentials or Placement papers on file?

Name of Agency: Division of Teacher Education and Certification

Address: Indianapolis, Indiana 46204

TEACHING EXPERIENCE

(List in reverse order last experience first)

Name and location of school or institution	Grade or Subjects	Dates	No. Teachers in System	Annual Salary
Thomas Carr Howe H.S.--Indpls., Ind.	French German	Sept. '68 Present	4,500	
Crispus Attucks H.S.--Indpls., Ind.	Pilot Russian Fr.-Eng.-Ger.	Sept '61 June '68	"	
Junior H.S. #69--Indpls., Ind. (Summer)	Language Arts	June '65 & June '66	"	

MILITARY SERVICE

Draft status 4D Branch of Service ..... Dates .....

REFERENCES

(Give at least five references, including especially superintendents and principals under whom you have taught, who have first-hand knowledge of your character, personality, scholarship and teaching ability.)

Name	Address	Telephone	Official Position
1Dr./Mrs. Regula Lorand	Indpls. Education Center (5014 Broadway) Home Address	634-2361	Asst. Supervisor [illegible] Lang.
2Dr. Alexander Moore	Indpls. Education Center	634-2381	Coordinator of Curriculum
3Dr. Everett Santer	Indpls. Education Center	"	Supervisor of Curriculum
4Mr. Robert McKay	School #69		Principal
5Reverend Paul Boatman	Westlane Christian Church		Minister

Note: Any falsification of information in this application will be considered cause for dismissal.

Timothy H. Cossin
Signature of Applicant

INFORMATION SHEET

TIMOTHEUS H. CARSON
3739 North Drexel Avenue
Indianapolis, Indiana 46218

January, 1972

Present Professions: Ordained Minister, High School Instructor (English and Foreign Languages); Poet and Author

Professional Training:

Bachelor of Arts degree (English, Religion, Foreign Languages) - Butler University
NDEA Certificate - Purdue University
German Certificate - Indiana and Butler Universities
Master of Arts degree - Indiana Central College

Professional Organization Memberships:

Indiana State Teachers Association
Indiana Educational Association
Indiana Foreign Language Teachers Association
English Teachers Club
Parent-Teachers Association

Committee Work:

Campus coordinator of Student Christian Association - Arkansas
American Friends Service Committee (Interracial campus and community liason - Little Rock, Arkansas
German Textbook Committee - Indianapolis
Curriculum Committee (Formulating standardized tests in French) - Indianapolis School System

Workshops:

Teaching Poetry in High School - Chairman, Reader, Interpreter and Guest Author (Indiana State Department of Public Instruction)
Audio-Lingual Teaching of French
Audio-Lingual Teaching of German
Audio=Lingual Teaching of Spanish
Multi-Ethnic Teaching in Inner-city
Your Church in a Racially Changing Community (NACC)
Passion for the Inner-city Soul (NACC)

Church Activities:

Associate Minister, First Baptist Church - Little Rock
President of Union District Missionary Youth Society, Baptist Church, (Comprising ninety churches) - Arkansas
President of Baptist State Missionary Society, Youth Auxiliary
Associate Minister of Good Samaritan Baptist Church - Indianapolis
Associate Minister of Martindale Avenue Christian Church - Indianapolis
Presiding Minister of Martindale Avenue Christian Church
Sunday School Teacher
Coordinator of Community Evangelism
Participant, with wife, in song message revivals

TIMOTHEUS H. CARSON

Citations:
National Honor Society
H.J.King Spanish Scholarship Award
Honorary Member, Southwest Regional Conference, National YMCA
Citation for Outstanding Work in Student Christian Association
Honored with Publicized program citing original literary works-program entitled "An Hour with Timotheus Carson"
Recommended by State Superintendent of Public Instruction to position in UNESCO for ability to communicate in eight languages

Professional Contributions:
Lecturer, Black Literature, Marian College - Indianapolis
Lecturer, Black Folklore, Howe High School, - Indianapolis
Lecturer, Harlem Renaissance in Literature
Lecturer, French Theater after 1940
Teacher, English, French, German, Spanish and Russian - Attucks H.S.
Elementary Teacher, Language Arts, English, Social Studies, Math, Science
Instructor in Developmental Reading - Attucks H.S.
Writer of short stories, poetry and drama (considerable amount of literature used in English teaching curriculum)
Translator of material and outstanding literary works from Italian, Spanish, French German, Swedish, Norwegian, Portuguese, limited degree of Greek and Russian

Family:
Married to Lillian Carson, teacher; one son, Andrew Bryan

Special Contributions:
"A Glimpse into the Heart of the Black Man", performed by Timotheus and Lillian Carson; a program of poetry and music, emphasizing the theme of brotherhood through Christ; presented 85 times since July 8f 1969 in churches, colleges and universities and minicipal auditoriums throughout Indiana, Illinois, Missouri, Arkansas and Texas.

Presented for Hoosier Capital Girl Scout Conference at Indiana Central College, Lutheran Human Relations Association, North American Christian Conventions in St. Louis (1970) and in Dallas (1971).

Presentations in colleges and universities include:
Butler University (Indianapolis)
St. Mary's College (South Bend)
Notre Dame University (South Bend)
Arkansas Technical College (Russelville, Arkansas)
Marian College (Indianapolis)
Indiana Central College (Indianapolis)
College of the Scriptures (Louisville) - Held in Memorial Auditorium
St. Louis Christian College (Florissant)
Recognized by offices of the Mayor of Indianapolis and the Governor of Indiana

FOR PERSONNEL OFFICE USE ONLY

Received JUL 11 1972
Acknowledge 7-11-72
Req. Credentials
Set Interview
Interview Date
Action

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT'S USE ONLY

Date
Assignment
Building
Salary
Signature

PLAINTIFF'S EXHIBIT 11

330

I. PERSONAL

Date

Soc. Security No. 257-80-3599

Mrs. Edmond (Last Name) Cynthia (First Name) (Middle Name)

Present address 1719 Chaiquita (Street) Spanish Lake (City) Mo. (State) 63135 (Zip Code) 741-2291 (Tele. No.)

Permanent address 1719 Chaiquita Terr (Street) Spanish Lake (City) Mo. (State) 63135 (Zip Code) 741-2291 (Tele. No.)

Position desired:

Elementary Level (Grade) (List in Priority)

Junior or Senior High School Social Studies, Government, Sociology or (other) (Subjects)

Other Positions

Date of Birth July 31, 1949 Height 5'1 Weight 122

Married Yes No of Children Cats Wife or Husband, living? Yes Divorced

Separated Number of persons wholly dependent upon you for support None

Physical Defects (a) Sight none (b) Hearing none (c) Other Defects None

Condition of health for past two years Good

With what Community Organizations are you associated? None

331

In what recreations do you engage? Outdoor Softball

Indoor

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? no

Are you left handed? or right handed? ✓

Would you arrange for a personal interview? yes

Military Status —

644

BEST COPY AVAILABLE

II. EDUCATION AND PROFESSIONAL TRAINING

High School Booker High School Address Forsyth Rd. Macon Ga. Total Units 15 in 19

Diploma Yes / No Yes Dates of Attendance 1963- 1967

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Fort Valley State	1967-71	B.S.	Social Science	95	15	190+ Planned
Fort Valley, Ga.						
Grand Total Credits						

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☑ No ☐

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☑ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State Georgia - T-4

Have you ever had a teaching certificate revoked? NO If so, explain with attached statement.

Give last date in school May 1971 Do you plan to continue graduate work? yes

If so, in what field? Library Science Place Undecided

Date Available for employment September 1972

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs	No. Teachers in System	Salary

Total years experience in Elementary Schools? _____ Junior High School? _____

Senior High School? _____. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 12th Subject Area (if applicable) Government

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? nc
If yes, explain with attached statement

Why do you wish to leave your present position? or
Why do you wish to return to teaching?

Why do you wish to teach here? I am interested in the School district

What salary are you receiving now? none What salary do you expect to receive here?

VI. PROFESSIONAL GROWTH

What professional magazines do you read? As of now none

What books have you read during the past year?

Of what professional organizations are you a member? none

What professional recognition have you had?

Extent of travel

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play?

Applicant's comment concerning the retention of children in primary grades

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Student Coding (Slog) Student Discussion History Activities

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction —
Audio Visual Aids Some but Very Little
Programmed Instruction —
Initial Teaching Alphabet (ita) —
Behavioral (measurable) Objectives —

SECTION IX., CONT.

Differentiated Staffing —

Modern Mathematics —

Ability Grouping (Reading) —

Team Teaching Yes

Non-Graded —

Group Guidance Yes (Student Teaching)

Supervised Study Yes " "

Please comment on any other special training and/or experience(s) which you have had.

I have worked with Student Voting and testing

336

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Mr. Lindsey	Carver High School Columbus, Ga.	Principal (Student Teaching)
Mr. E.P. Roberts	Lamar Co. Elem. School Barnesville, Ga.	Principal (Student Teaching)
Mrs. E.J. Reids	1715 9th Street Columbus, Ga.	Teacher
Mrs. Mable Underwood	Box 22 Barnesville, Ga.	Librarian
Miss L.V. Carter	P.O. Box 4 Fort Valley State College, Fort Valley, Ga.	Teacher

337

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE July 10, 1972 SIGNATURE Mrs. Cynthia Edwards

(Completed application should be returned to Personnel Office)

PLAINTIFF'S EXHIBIT 21

338

FOR PERSONNEL OFFICE USE ONLY
Received
Acknowledge
Req. Credentials
Set Interview
Interview Date
Action

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT'S USE ONLY
Date
Assignment
Building
Salary
Signature

I. PERSONAL

Date 3/11/73

Soc. Security No. 493-52-7599

Mr. Howell, Robert Wesley
(Last Name) (First Name) (Middle Name)

Present address 898 Alanson Dr., University City, Mo. 63132 997-0950
(Street) (City) (State) (Zip Code) (Tele. No.)

Permanent address 898 Alanson Dr, University City, Mo. 63132 997-0950
(Street) (City) (State) (Zip Code) (Tele. No.)

Position desired:

Elementary Level _____
(Grade) (List in Priority) (other)

Junior or Senior High School Social Studies
(Subjects)

Other Positions Track or Football Coach

Date of Birth 8/26/47 Height 6-0 Weight 230

Married NO No. of Children NONE Wife or Husband, living? _____ Divorced _____

Separated NO Number of persons wholly dependent upon you for support None

Physical Defects (a) Sight NONE (b) Hearing NONE (c) Other Defects NONE

Condition of health for past two years Good

With what Community Organizations are you associated? None

In what recreations do you engage? Outdoor Golf

Indoor Handball

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? yes

Troop 124 of Love Tabernacle CME Church

Are you left handed? NO or right handed? yes

Would you arrange for a personal interview? yes

Military Status 1-H

339

898

II. EDUCATION AND PROFESSIONAL TRAINING

High School Sumner High Address 4248 W Cottege Total Units ____

Diploma (Yes) / No yes Dates of Attendance 1961 - 1965

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
University of Missouri at St. Louis	1965-1971	B.S.	Education in Social Studies	108	28	136
Grand Total Credits						163

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☑ No ☐ Life certificate

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☑ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State None

Have you ever had a teaching certificate revoked? No If so, explain with attached statement.

Give last date in school 1973 Do you plan to continue graduate work? yes

If so, in what field? M.A.T. Social Studies Place Webster Cabbege

Date Available for employment June 1973 Still Attending Webster College.

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
Northwest High School	Social Studies	1971-1973	2	200	5200
Student teaching at Hazelwood Senior High	World History	1971	1/2	—	None

Total years experience in Elementary Schools? None Junior High School? None

Senior High School? 2 1/2. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 11 th Subject Area (if applicable) World History

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

699

340

341

V. GENERAL FACTS

Have you failed of re-election to a teaching position? No Where ? _____
If yes, explain with attached statement. _____

Why do you wish to leave your present position? or
Why do you wish to return to teaching? My First Choice was Hazelwood before entering the St. Louis School System.

Why do you wish to teach here? yes

What salary are you receiving now? 5,200 What salary do you expect to receive here? starting

VI. PROFESSIONAL GROWTH

What professional magazines do you read? School and Community

What books have you read during the past year? The Worldly Philosophers, Economics of the Public Sector, Growth and Welfare of the American Past.

Of what professional organizations are you a member? St. Louis Teachers Union

What professional recognition have you had? none

Extent of travel none

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VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? _____

Applicant's comment concerning the retention of children in primary grades _____

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Football (out side of my teaching area).

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction Project Effect of the St. Louis School System

Audio Visual Aids Limited

Programmed Instruction Project Effect of the St. Louis School System

Initial Teaching Alphabet (ita) none

Behavioral (measurable) Objectives Limited

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SECTION IX., CONT.

Differentiated Staffing NONE

Modern Mathematics NONE

Ability Grouping (Reading) NONE

Team Teaching Limited

Non-Graded NONE

Group Guidance Limited

Supervised Study 2 years

Please comment on any other special training and/or experience(s) which you have had.

Typing Skills

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Mr. Chain Houston	Northwest High School 5140 Riverview	Northwest Princ.
Mr. Anderson	Northwest High School 5140 Riverview	Northwest Asst Princ.
Mr. Frank Nuddell	Hazelwood Senior High 15955 New Halls Ferry Road	Hazelwood Social Studies Teacher
Mr. Gary B. Sallade	Hazelwood Senior High 15955 New Halls Ferry Road	Hazelwood Asst Princ.
Dr. Martin Towey	4825 Craigmont	Missouri U. at St Louis Education Department

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE 3/11/73 SIGNATURE Robert W. Howell

(Completed application should be returned to Personnel Office)

FOR PERSONNEL OFFICE USE ONLY
Received MAY 5 1972
Acknowledge
Req. Credentials
Set Interview
Interview Date
Action

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

FOR SUPERINTENDENT'S USE ONLY
Date
Assignment
Building
Salary
Signature

APPLICATION FOR TEACHING POSITION

PLAINTIFF'S EXHIBIT 31 346

I. PERSONAL

Date May 3, 1972

Soc. Security No. 492-30-3263

M Palmer, Willie John
(Last Name) (First Name) (Middle Name)

Present address 3420 Cottage Grove Apt 503 Chicago, Ill. 60616 312 84[illegible]
(Street) (City) (State) (Zip Code) (Tele No.)

Permanent address 5514 Bartmer St. Louis, Mo. 63112 314-721-9926
(Street) (City) (State) (Zip Code) (Tele No.)

Position desired:

Elementary Level Reading Specialist, Administration, Science Teacher
(Grade) (List in Priority) (other)

Junior or Senior High School Reading Specialist, Media-Specialist, Curriculum
(Subjects)

Other Positions Teacher in Elementary grades, Public Relations Lab.

Date of Birth Sept. 29, 1928 Height 5'8" Weight 175

Married yes No. of Children 5 Wife or Husband, living? yes Divorced No

Separated No Number of persons wholly dependent upon you for support one

Physical Defects (a) Sight Wear glasses (b) Hearing —o— (c) Other Defects —o—

Condition of health for past two years Good

With what Community Organizations are you associated? At present none, came to this city 9 months ago.

In what recreations do you engage? Outdoor Camping, traveling, fishing, Swimming

Indoor Swimming, table tennis, basket ball, billards

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? yes

Boy Scouts, YMCA Group, Project STAY, Science clubs

Are you left handed? _____ or right handed? right handed

Would you arrange for a personal interview? Yes, Will be in St. Louis, May 25, 1972 or time you designate.

Military Status Served - 1951-1953

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II. EDUCATION AND PROFESSIONAL TRAINING

High School Washington Technical Address 14th and Franklin Total Units 19

Diploma (Yes) No Dates of Attendance 1944-1946

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Stowe Teachers College St. Louis, Mo.	1946-1954	A.B	Education	28	28	142
Southern Illinois U. Edwardsville, Illinois	1965-1970	-	Education	16	8	26
Carleton College Northfield, Minnesota	Summer 1966	Certificate	Science	6	-	6
U. of North Dakota Grand Forks N. D.	1967-1968	Certificate	Science	24	-	32
Harris Teachers College St. Louis, Mo.	Fall 1969	Certification	Reading	10	-	13
Grand Total Credits				74	36	219

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☒ No ☐

Elem. 2 Yr. ☐ Life ☒ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☐ No ☐

List any other teaching certificates you may hold and give State None

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Have you ever had a teaching certificate revoked? If so, explain with attached statement. No.

Give last date in school Winter - 1972 Do you plan to continue graduate work? Yes

If so, in what field? Education Place Southern Illinois University

Date Available for employment As soon as possible

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
Enright Reading Clinic 5331 Enright St. Louis Mo.	Reading	1969-1970	1	5,000	$11,200.00
Enright Middle School 5331 Enright St. Louis, Mo.	Science	1961-1969	8	5,000	11,000.00
Simmons Home School 4340 St. Louis Ave. St. Louis, Mo.	All Subjects	1955-1961	6	4,500	6,800.00

Total years experience in Elementary Schools? 6 Junior High School? 8

Senior High School? ____. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 1-8 Subject Area (if applicable) all areas

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

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V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? NO
If yes, explain with attached statement.

Why do you wish to leave your present position? or
Why do you wish to return to teaching? To motivate children and give insight into Industrial World.

Why do you wish to teach here? My knowledge and experience should be shared with children.

What salary are you receiving now? $13,800.00 What salary do you expect to receive here? $ Open

VI. PROFESSIONAL GROWTH

Job requires that I read any publication that relates to work.
What professional magazines do you read? Instructor, Grade Teacher, The Reading Teacher, Nation's Schools, Educational Research, Business Week, etc

What books have you read during the past year? "Peter's Principle," "The Dirty Ball Player," "Mass Communications," "Statistical Reasoning in Psy and Ed," "Blackboard Jungle," "Reading Ceasley," "Educational Test and Measurement," and "A Better Memory."
Of what professional organizations are you a member? None at present.

What professional recognition have you had? None

Extent of travel Most states in Western and Northern United States.

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? None

Applicant's comment concerning the retention of children in primary grades A question with variables, depending on "school of thought", some educators recommend retention only in primary grades, open-classroom another view, modular-scheduling another, I think it depends on each individual child.

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? Baseball, softball, basketball, Science club, Boy Scouts, YMCA Groups, Camping outings, Fishing club, Conservation,

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction

Audio Visual Aids Special Courses at S.I.U. and Communication Specialist with IBM.

Programmed Instruction Have studied with PI; AV courses contained materials related to PI.

Initial Teaching Alphabet (ita) Reading Clinic

Behavioral (measurable) Objectives Writing them presently for linguistic reading test.

SECTION IX., CONT.

Differentiated Staffing ~~e~~

Modern Mathematics Course at SIU.

Ability Grouping (Reading) St. Louis School System, Reading Clinic

Team Teaching Observation at University of North Dakota

Non-Graded Observation at Enright Middle School - St. Louis, Mo.

Group Guidance Only, during work with Scouts and YWCA Groups.

Supervised Study Enright Middle

Please comment on any other special training and/or experience(s) which you have had.

See Resume

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X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Mrs Pearl Schwartz	4201 E. Labadie St. Louis, Mo.	Teacher - Certified
Mr. John Bass	3836 Natural Bridge St. Louis	Principal
Mr. John Staples	5331 Enright Ave. St. Louis, Mo.	Adm. Assistant
Mr. Rufus Young	5331 Enright Ave. St. Louis, Mo.	Principal
Mr. Dannie Franklin	5331 Enright Ave. St. Louis, Mo.	Adm. Assistant

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All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE May 3, 1972 SIGNATURE Willie J. Palmer

(Completed application should be returned to Personnel Office)

IBM 42

ALLIANCE FOR COMMUNITY CONTROL

4300 Goodfellow Blvd. Building 105 D St. Louis, Missouri 63120 Phone 761-2504

BOARD OF DIRECTORS

Mrs. Pearl Schwartz White
Chairman

Atty. Murry A. Marks
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Rev. Allen Fluent

Rev. William G. Gillespie

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Mr. Woodrow T. Hughes

Mr. James E. Hutt

Mrs. Grace B. James

Mr. Roy Kenner

Mrs. Florida Rucks

Rev. John A. Shocklee

Mrs. Faith Taylor

Mrs. Johnnie N. Venuto

Mr. Boyd L. Wilson

Dr. Fredda D. Witherspoon

4207 E. Labadie Ave.
St. Louis, Mo. 63115
June 10, 1970

To Whom It May Concern

Dear Sir:

I am pleased to recommend Willie J. Palmer, a former student of mine in the St. Louis public schools, for a position of employment. Rev. Palmer is a gentleman of high virtues and lofty ideals of character. He is honest, cooperative, courageous, appreciative of others and finds pleasure in helping others achieve wholesome living. He likes to work and enjoys completing a task in every detail of high quality.

Again, it is an extreme pleasure to tell about a Christian young man with a fine sense of honor. This is Willie Palmer.

Yours truly,
Pearl Schwartz White

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BEAUMONT HIGH SCHOOL
3636 NATURAL BRIDGE AVE.
ST. LOUIS, MISSOURI 63107

OFFICE OF THE PRINCIPAL

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June 11, 1970

TO WHOM IT MAY CONCERN:

I have known Mr. Willie Palmer for a period of fifteen years. My experience with him has been as a community person and also as an employee.

Mr. Palmer served as a coordinator in the Youth Manpower Training Program at the O'Fallon Technical High School 1965-1969. Mr. Palmer's responsibilities were in the area of Adult Basic Education and Social Development Services.

Mr. Palmer has exhibited the kind of leadership and loyalties that are necessary for good organizational success. I give my endorsement to Mr. Palmer as a person who is dependable and can accept administrative responsibilities and accountabilities.

If additional information is needed, please contact my office.

Very truly yours,

John F. Bass

JOHN F. BASS
Principal

JFB:lmr

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SAINT LOUIS PUBLIC SCHOOLS

OFFICE OF THE PRINCIPAL
ELEMENTARY DIVISION

June 10, 1970

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To Whom it May Concern:

I have known Willie J. Palmer, personally, for the past twenty years and have found him to have the highest character and integrity.

He has a warm and out-going personality. He relates well to others and has shown dedication to working with youth.

Professionally, I have always found him to be cooperative and responsible person. This responsibility extends from his direct job assignment to equipment or anything in his charge. He is a willing and conscientious worker who discharges his duties, faithfully.

Willie Palmer has worked in the field of recreation and athletics for a number of years.

I have found him highly qualified, and recommend him to you, without reservation.

Sincerely,

John H. Staples

John H. Staples
Administrative Assistant
Coordinator of After-School
Activities

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BEST COPY AVAILABLE

SAINT LOUIS PUBLIC SCHOOLS

DIRECTOR
ENRIGHT DISTRICT — PROJECT STAY
5331 ENRIGHT AVENUE
ST. LOUIS, MISSOURI 63112

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June 12, 1970

To Whom it May Concern:

Mr. Willie Palmer, a teacher in the St. Louis Public Schools, is applying for a position in Minneapolis, Minnesota. He has asked me to furnish a letter of recommendation which I comply without hesitation.

I have known Mr. Palmer for approximately seven (7) years; four of these years as the principal of the junior high school in which he taught science. He was cooperative and very interested in his work being both flexible and intelligent in coping with the demands of his responsibilities.

Being cognizant of the need to continue to improve, Mr. Palmer has furthered his training by attending the University on a year's leave of absence. Since that time he asked for and received a position in the lower grades, working with children who had not discovered their potential. In addition, he has served in the past year as a trainee in the nationally renowned St. Louis Reading Clinic, becoming a Clinician in this area.

Mr. Palmer is liked by his associates and me and it is a pleasure to recommend him to you for consideration. I believe he will make a contribution to your program and be an asset to it.

Sincerely yours,

Rufus Young, Jr.

Rufus Young, Jr.
Director

RY/mca

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IBM 42

IBM

PERSONAL

Date: December 3, 1970
From (location or U.S. mail address): GSD Operations
Rochester, Minnesota
Dept. & Bldg: 204/020-2
Tieline & Tel. Ext.: 1439

Subject: **Recent Technical Report and Course Completion**

Reference:

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To: **Mr W J Palmer**
204/020-2

Willie, congratulations on two recent completions. Your work on David Hines' Technical Report 07.403 was a thorough and most professional approach to your first major project. I know you've worked on several other projects, but you saw this one through from start to finish.

I'd also like to commend you on completing the Mass Communications course at Rochester State Junior College. This clearly shows your interest and effort in improving yourself in a profession that's relatively new to you.

Keep up the fine work!

J E Cain
Information Manager

/ksh

cc B A Brough 726/020-2

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Date July 14, 1971
From (Location) GSD
(U.S. mail address) Rochester
Dept. & Bldg. 876 006-1
Telephone & Tel. Ext. 1133

IBM

Subject: Preparation of ASEE Conference Paper

Reference:

To: Willie Palmer
726/001

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Willie, thanks a million for the superb help you gave me in preparation of my paper. The end result of our sessions was pure and sweet success!

The presentation went smoothly and proved to be one of the best attended, most talked about sessions of the conference.

I received many compliments on the paper and was highly complimented by Dr Holte of the U of Minn on the presentation itself.

Thanks, again, for your open minded assistance that made it possible!

Ron Stong
876 Eng Ed.

RKS/rs

cc M King
W Moody

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SAINT LOUIS PUBLIC SCHOOLS

DIRECTOR
ENRIGHT DISTRICT — PROJECT STAY
5331 ENRIGHT AVENUE
ST. LOUIS, MISSOURI 63112

June 12, 1970

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To Whom it May Concern:

Mr. Willie Palmer has requested that I write a letter of reference for him.

I have known Mr. Palmer for nine years personally and professionally. During this time he has proven to be excellent in his abilities as junior high school teacher, department chairman, and now as a specialist teacher.

Mr. Palmer has shown uniqueness through his character and personality in interpersonal contacts and has become an asset in the various professional involvements during the time I have known him.

I strongly would recommend him and his competencies.

Sincerely,

Dannie E. Franklin

Dannie E. Franklin
Administrative Assistant
Project Stay
Enright District

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TELEPHONE 862 0243

Date: October 18, 1971
From (Div. & location / U.S. mail address): SDD
Rochester, Minnesota
Dept. & Bldg.: 258/030-3
Tieline & Tel. Ext.: 6129

IBM

Subject:

Reference:

To: Mr W Palmer

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This is just a short note to let you know of the success of our talk at CECON. I just received the award and I want to once again thank you for the help and advice in preparation for the talk.

If you get to Rochester, please drop in to see the plaque.

Duane W Baxter

Duane W Baxter

/slg

cc
A Hamburgen
M King

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CARLETON COLLEGE

NORTHFIELD, MINNESOTA

This certifies that Willie J. Palmer
Name

5895 Highland Avenue
Address

St. Louis, Missouri was a member of
City State

The Summer Institute for Teachers of General Science

supported by the National Science Foundation, at Carleton College, June 20 to July 30, 1966. This participant was enrolled in the two courses indicated below.

	Institute Course	Grade
	Mathematics	
____	New Materials in High School Algebra	____
____	Concepts of Calculus	____
____	Set Theory, Functions, and Related Topics	____
____	Geometry	____
____	Structure of Elementary Algebra	____
____	New Materials in High School Geometry	____
	General Science	
X	Astronomy, Descriptive and Historical	Pass
X	Geology, Physical and Historical	Pass

Each course passed represents the equivalent of three semester hours credit at the graduate level.

This certificate bearing the seal of the College constitutes the official transcript of work completed.

Kenneth Klingstedt
Registrar

AUG 16 1966
Date

-762

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University of North Dakota

Academic Year Institute
for High School Teachers of Science

September 1967 — June 1968

SPONSORED BY THE NATIONAL SCIENCE FOUNDATION

In Recognition of Attendance and Satisfactory Completion of the Program of the Institute

WILLIE J. PALMER

IS HEREBY AWARDED THIS

Certificate of Completion

which entitles the recipient to all of the rights and privileges available to those who have successfully finished the work offered by this Institute.

William Johnson
Dean of the Graduate School

C. C. Gardner
Director of Institute

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STATE OF MISSOURI PUBLIC SCHOOL TEACHER'S CERTIFICATE

This CERTIFICATE, issued at Jefferson City by authority of the State Board of Education, is a license for the holder to teach in the public schools of Missouri as herein specified, unless such certificate is revoked.

PERSON TO WHOM ISSUED PALMER WILLIE JOHN SOCIAL SECURITY NO. 492-30-3263

DATE ISSUED 03/17/70 (Mo. Day Yr.)

VALID FROM 07/01/69 TO LIFE (Mo. Day Yr.)

Deg.	Yr.	If in Ed.
MA	54	ED

DEGREES

SUBJECTS AND/OR SERVICES LICENSED

SUBJECT OR SERVICE		CERTIFICATE CODE	
ELEM	ELEM	02	47
MATH	7-9	04	58
SOC ST	7-9	04	66
SP	1-12	06	81

SUBJECT OR SERVICE		CERTIFICATE CODE	
ENG	7-9	04	48
SCI789	7-9	04	50
COR CR	7-9	04	45

COPY FOR TEACHER'S FILE

Any entry made on this certificate other than by issuing authority will render the certificate void
An official list of certificate abbreviations and code numbers is shown on the reverse side of the certificate.

Hubert H. Wheeler
Commissioner of Education

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Chicago State College

Department of Psychology
6800 South Stewart Avenue
Chicago, Illinois 60621

Telephone 312/224-3900

April 21, 1972

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To whom it may concern:

Willie J. Palmer regularly attended my Statistics course on Wednesday nights from 5-8:00 P.M. for the entire Winter semester. Mr. Palmer did excellent work and the class was enhanced by his presence.

Sincerely,

Paul S. Sherman

Paul S. Sherman, Ph.D.
Assistant Professor

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RESUME

Willie J. Palmer
3420 Cottage Grove Apt. 503
Chicago, Illinois 60615

Telephone Numbers:
Home: 312-842-7936
Work: 312-944-7552 Ext. 372

Date of Birth: September 29, 1928

Social Security Number: 492-30-3263

Armed Service: Served 1951-1953

EDUCATION

High School--- Washington Technical H.S. St. Louis, Missouri
Graduated June 1946.

College --- [illegible] College, St. Louis, Missouri
[illegible] June 1954.

University --- [illegible] Illinois University, Carbondale and Edwardsville, Illinois Graduate Work--1965-1970 Geography, Education, and Audio-Visuals.

Carleton College, Northfield, Minnesota-
Astronomy and Geology Summer 1966 Certificate.

University of North Dakota, Grand Forks, North Dakota--Academic Year 1967-1968 Certificate.

Rochester Junior College, Rochester, Minnesota
Mass Communications-Special Course-1971.

University of Minnesota Extension in Rochester, Rochester, Minnesota--Technical Writing -Special Course-1971.

PRESENT JOB

ASSISTANT EDITOR at Science Research Associates,Inc. (SRA) Chicago, Illinois 61611.

Duties of the job:

--- Edit copy for publication.

--- Write items for diagnostic test in reading

--- Research reading materials in basal text and professional literature.

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--- Coordinated pretest and equating study for SRA Achievement Series 1-3 and 4-9, for a random sample of the United States.

--- Wrote items for Awareness Survey Test.

--- Wrote manual for the administration of test.

PREVIOUS JOB (August, 1970 to August 1971)

COMMUNICATION SPECIALIST at IBM, Rochester, Minnesota 55901

Duties of the job:

---Edit authors papers for external publication; journals and conferences,

---Made presentations to the different departments in the plant on the responsibilities of the Communications Department,

---Coordinated program on a plant-wide basis,

---Wrote special paper for visual-aid communication,

---Helped authors write papers,

---Did special assignments in Community Relations [illegible],

---Attended classes within the plant that gave insight into the Industrial World,

---Had slides prepared for speakers who made external presentations.

PREVIOUS JOB (September, 1955 to June,1970)

TEACHER in the St. Louis Public School System.

---Reading Teacher--fullfilled all requirements to be certified as a Reading Specialist by the State of Missouri.

---Science Teacher---sponsored field trips, participated in the Science Fair of Greater St. Louis for ten or more years,and sponsored a Science Club, while teaching general science daily.

---Manpower Program Teacher on a part-time basis for three years in basic Education Program.

PREVIOUS JOB (June, 1950 to June, 1955)

---Industrial worker at General Cable Corporation, St. Louis, Missouri, as strander, enameler, and lift-truck driver.

PREVIOUS JOB (April, 1947 to November, 1949)

--- Part-time job while in college - Photographic Developer for C. A. George Photographic Supplies, St. Louis, Missouri.

DIVISION OF CERTIFICATION
STATE TEACHERS COLLEGE

Record of PAYNE, Willie John

Resides at 2956 Maple Avenue, St. Louis, Missouri Born Biscoe, Arkansas 5th September 1926
(City) (State) (Date) (Month) (Year)

Admitted to College September 5, 1946 from Washington Technical H. S. by Rank to the Freshman Class

Graduated from College AUGUST 1954 ranking 3rd in a class of 3 receiving A. B. degree.

Completed Apprenticeship January 25, 1954 receiving the following grades:

Management of Children Average Instruction Average Attention to Details of School Business Outstanding

Personality Qualifications: Above Aver.

HIGH SCHOOL RECORD

Graduated from Wash. Tech. High School June, 1946 (Date) Ranking 1st in a class of 92 with the following high school units:

Source: Prairie County Training School, Biscoe, Arkansas

SUBJECTS	UNITS		SUBJECTS	UNITS		SUBJECTS	UNITS		SUBJECTS	UNITS	
	No.	Source		No.	Source		No.	Source		No.	Source
English	3½	1, 2	Amer. History	1	2	Algebra			Biology	1	1
[illegible]			[illegible] World	1	2	[illegible]	1	2	[illegible]		
[illegible]			[illegible]			[illegible]			[illegible]		
[illegible]			[illegible]			[illegible]			[illegible]		
[illegible]			[illegible]			[illegible]	1	1	[illegible]		
[illegible]			[illegible]			Arithmetic	1	1	Physics		
Commercial	1	1	[illegible]	1	2	Gen. Science	1	1	Civics		
Typewriting	1	2	[illegible]	½	2	Plane Geom.	2	2	Physiology		

Jr. A. B. Williams
[illegible]

December 20, 1946
Date

Record in STC Teachers College

Additional High School Work

Number	Year	Subject	Final Grade	Hours	Credit
21-OA	I	[illegible] Algebra			
21-CA	II	[illegible] Algebra			
21-CS	I	[illegible]			
21-CS	II	[illegible]			

College Tests Not Carrying Credit

	Date	Remarks		Date	Remarks
Arithmetic Proficiency Test			Penmanship Proficiency Test		
Art Proficiency Test			Physical Education Proficiency Test		
Grammar Proficiency Test			Speech Proficiency Test		
Music Proficiency Test			Spelling Proficiency Test		

College Courses Not Carrying Credit

Number	Subject	Year	Final Grade	Present	Absent	Remarks

College Courses Carrying Credit

Basis of Credit: ONE COLLEGE SEMESTER CREDIT is given in the FALL OR SPRING SEMESTER for the satisfactory completion of fifty-four hours of work devoted to class instruction or laboratory work in one of the terms of not more than eighteen weeks, to recitation and preparation, three or more hours to recitation and fifteen to twenty preparation, or two hours to laboratory work. ONE COLLEGE SEMESTER CREDIT is given in the SUMMER SESSION for the satisfactory completion of fifty-four hours of work devoted to class instruction or laboratory work. The following were taken hours to recitation and thirty-three to outside preparation, thirty to recitation and twenty-four to outside preparation, or laboratory hours should be satisfactory work.

Completed Period: Five Semesters

Grading System: Percentage Basis
Below Satisfactory
Discharged from Course.

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College Record ..... and Name Printed .....

Number	Part	Descriptive Title of Course	Year	Credit Hours				
Ed. 90		Freshman Orientation Fall	1946	4	1	30	2	8
Eng. 103	A	English Composition		4	2	78	[illegible]	[illegible]
Fr. 100	A	Elementary French		3	1	59	3	9
Math 100		College Algebra		3	1	59	3	9
P.Ed. 93	A	Elementary Physical Education and Health		3	4	56	1	3
Ph. 100	A	General Physics		4	4	56	3	12
Spch. 104	A	Fundamentals of Speech		4	0	20	1	4
		Grade Pts. 45						
		Crs. 13 Date 2/6/47						
		Aver. 3.46 Init. a.j. EPB.						
Art 100	B	Orientation in Fine Arts Fall	1947	3	1	30	2	6
Eng. 103	A	English Composition		3	1	79	4	12
Fr. 100	B	Elementary French		3	3	57	3	9
Math 104		Trigonometry		4	1	59	3	12
P.Ed. 93	B	Elementary Physical Education and Health		4	2	58	1	4
Ph. 100	B	General Physics		3	2	58	3	9
Spch. 104	B	Fundamentals of Speech		4	1	59	1	4
Eng. 103	B	English Composition		3	2	78	4	12
		Grade Pts. 113						

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		Crs. 24 Date 2/22/48						
		Aver. 3.32 Init. A.P.W.						
Bi. 100	A	General Biology Spring	1948	4	4	56	3	12
Ch. 100	A	General Chemistry		3	3	57	3	9
Geog. 100		Principles of Geography		3	2	58	3	9
P.Ed. 103	A	Advanced Physical Education		5	2	38	½	2.5
S.S. 105		Modern World History		4	0	60	3	12
S.S. 132		General Sociology		4	3	57	3	12
		Grade Pts. 164.5						
		Crs. 49.5 Date 7/13/48						
		Aver. 3.42 Init. L.G.W.						
Bi. 100	B	General Biology Fall	1948	4	1	59	3	12
Ch. 100	B	General Chemistry		3	5	55	3	9
Eng. 201	B	Types of Literature		3	3	57	3	9
P.Ed. 108	B	Advanced Physical Education		3	2	38	½	1.5
S.S. 215		American Government		5	3	57	3	15
S.S. 230		American History		3	6	54	3	9
		Grade Pts. 2.25						
		Crs. 65 Date 3/9/49						
		Aver. 3.46 Init. m.t.o. w.j.						

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College Record Stowe Official Name Palmer, Willie John

Number	Part	Descriptive Title of Course	Year	Final Grade	Times Absent	Times Present	Semester Hours Credit Allowed	Grade Points
Ed. 100		Introduction to Education Spring	1949	3	2	38	2	6
Eng. 201	A	Types of Literature		3	5	55	3	9
Math 202		Analytic Geometry		3	2	58	3	9
P.Ed. 329	A	Gymnastics		3	3	37	1	3
Psy. 200		General Psychology		3	2	58	3	9
S.S. 134		Economics		3	5	55	3	9
S.S. 302		The Negro in American History		3	1	59	3	9
		Grade Pts. 2715						
		Crs. 82.5 Date 6/16/49						
		Aver. 3.6 Init. [illegible]						
ADMITTED BY THE FACULTY TO THE SENIOR COLLEGE LEVEL AS OF STATE TEACHERS COLLEGE, JUNE 17, 1949,								
PROVIDED AN AVERAGE OF 3.00 OR MORE IS FINISHED ON ANOTHER ENGLISH COMPREHENSIVE EXAMINATION								
THE END OF THE FALL, 1949 SEMESTER.								
Ed. 309		Psychology and Hygiene Fall	1949	B	6	94	3	15
Psy. 310		Child Psychology		A	5	95	3	12
P.Ed. 329	B	Gymnastics		B	2	38	1	3
S.S. 202		History of Latin America		A	2	98	3	12
S.S. 312		Latin American Area		B	3	97	3	9
		Grade Pts. 327						

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		Crs. 82.5 Date 6/16/49						
		Aver. 3.96 Init. [illegible]						
Ed. 309		Psychology and Hygiene Spring	1950	B	3	57	3	9
Ed. 351	A	Creative Teaching		A	2	58	3	9
Eng. 203		Literature for Children		B	1	59	3	9
Math. 300		Arithmetic for Teachers		A	2	58	3	12
P.Ed. 103	A	Survey Course in Recreational Acts		B	1	59	2	6
P.Ed. 327		Softball and Volleyball		A	2	58	2	8
		Penmanship		A	3	57	—	—
		GRADE PTS. 378						
		CREDITS 105 DATE 6/25/50						
		AVERAGE 3.6 INITIALS [illegible]						
Art 300		Art for Teachers Fall	1950	WP	3	57	—	—
Ed. 340		Philosophy of Education		WE	29	31	—	—
Mu. 300		Music for Teachers		WE	30	30	—	—
		Grade Pts. 378						
		CREDITS 105 Date 1/25/51						
		Aver. 3.6 Init. [illegible]						

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769A

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SOUTHERN ILLINOIS UNIVERSITY

Carbondale — Edwardsville

492-30-3262

: Willie J. Palner — Birth Date: 9/29/28 — No. ES210
ulation Date: 6/3/65 — Location: Carbondale x — Edwardsville ____

e Address: 5895 Highland Avenue — City and State: St. Louis, Missouri
nt or Guardian: — Address:
School: — H. S. Address:
of Graduation: / / — Rank in Class: / — PA & C: Yes No

ec: — Date:
ctional Unit: — Graduated from: Carbondale ____ Edwardsville ____
r: — Minor:

e: — Date:
ctional Unit: — Graduated from: Carbondale ____ Edwardsville ____
r: — Minor:

rs, Awards, Thesis Title:

* 4756 Magnolia
St. Louis, Mo.

COURSE TITLE	DEPT.	Course Number	Cr. Hrs.	GRADE	COURSE TITLE	DEPT	Course No.	Cr. Hrs.
LASSIFIED GRADUATE								
SUMMER QUARTER 1965		ES210						
ECON GEOG I	GEOG	404C	3	C				
TORIAL IN GEOG	GEOG	490D	1	B				
CULTURAL GEOG I	GEOG	406C	3	B				
PHYS GEOG I	GEOG	402C	3	B				
EDWARDSVILLE CAMPUS								
80 WINTER 1966		ES210						
UC MEASUREMENT I	GUID	422	4	B				
80 FALL 1966		ES210						
PR ARITH ELEM SC	EDEL	415	4	A				
-V METH IN EDUC	IM	417	4	NP				
88 WINTER 1970		ES210						
PR RD INSTS	EDEL	505	4	A				
88 SPRING 1970		ES210						
V METH IN EDUC	IM	417	4	A				

S IS AN OFFICIAL TRANSCRIPT
UED AT STUDENT'S REQUEST

JOHN R. DAVIS
ASSISTANT REGISTRAR
2-18-71

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College Record.....STCE.....Official Name.....PALMER, Willie J.....

Number	Part	Descriptive Title of Course	Year	Final Grade	Times Absent	Times Present	Semester Hrs. Credit Allowed	Grade Points
Ed. 361		Classroom Organization and Management Fall	1953	B	0	40	2	6
Ed. 362		Apprenticeship		3.75	1	99	8	30
[illegible]		414 CREDITS 123.5 [illegible] 3.35		[illegible]	1/19/54		[illegible]	[illegible]
Art 300		Art for Teachers Spring	1954	A	3	57	3	12
Ed. 340		Philosophy of Education		B	2	58	3	9
Ed. 351	B	Creative Teaching		B	1	59	3	9
Mu. 300		Music for Teachers		B	0	80	4	12
P.A. 100	B	Survey Course in Practical Arts		A	1	59	3	12
P.Ed. 325	A	Folk and Tap Dance		B	0	40	½	2
GRADE POINTS		477 CREDITS 140 CUM. AVER.	3.36		DATE	6/54	[illegible]	[illegible]
		[illegible] FROM ST. LOUIS [illegible]						
Soc 1&2		The Family	Sum. '54	C			3	
MR. WILLIE J. PALMER WAS AWARDED THE A.B. DEGREE IN EDUCATION AUGUST, 1954 AT STOWE TEACHERS								
COLLEGE. RANK: 3rd in a class of 3.								

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LEGEND OF GRADES

The Semester: 20 weeks The Period: 50 minutes
Passing Grade: D(2)
Grades: A(5) Superior; B(4) Above average; C(3) Average; D(2) Below average, but passing; F(1) Failure; W-Withdrawn; WP-Withdrawn passing; WF-Withdrawn failing;
Requirements for A.B. degree: 124 or more semester credits

Ed 3103		Educational Measurements	F. '56	C			2
Ed. 2003		Investigative Laboratory	Sp. '57	W			0
		St. Louis Government Workshop "We Elect"	F'65	Cr.			1
Ed 3705I		Methods of Teaching Remedial Reading	F.'69	B			2
Ed 4035I		Individual Intelligence Testing		B			2
Ed 4025I		Practicum in Diagnosis of Reading Difficulties		B			3
Ed 4105I		Practicum in Remediation of Reading Difficulties		B			3
		Date Registrar					

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PLAINTIFF'S EXHIBIT 36

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FOR PERSONNEL OFFICE USE ONLY	
Received	APR 27 1973
Acknowledge	
Req. Credentials	
Set Interview	
Interview Date	
Action	

HAZELWOOD SCHOOL DISTRICT

15955 New Halls Ferry Rd.
Florissant, Mo. 63031

APPLICATION FOR TEACHING POSITION

FOR SUPERINTENDENT'S USE ONLY	
Date	
Assignment	
Building	
Salary	
Signature	

I. PERSONAL

Date April 24, 1973

Soc. Security No. 488-52-2965

Miss SHAW (Last Name) Georgia (First Name) Mae (Middle Name)

Present address 5723 Roman Court, St. Louis, Mo. 63140 (314) 521-5901
(Street) (City) (State) (Zip Code) (Tele. No.)

Permanent address 5723 Roman Court, St. Louis, Mo. 63140 (314) 521-5901
(Street) (City) (State) (Zip Code) (Tele. No.)

Position desired:

Elementary Level 3, 4, 5, 2, 1, 6 (Grade) (List in Priority) ---- (other)

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Junior or Senior High School NA (Subjects)

Other Positions NA

Date of Birth June 11, 1947 Height 5'2 1/2" Weight 125 pounds

Married Single No. of Children None Wife or Husband, living? NA Divorced NA

Separated NA Number of persons wholly dependent upon you for support None

Physical Defects (a) Sight None (b) Hearing None (c) Other Defects None

Condition of health for past two years Excellent

With what Community Organizations are you associated? Because of my heavy schedule--student teaching, part-time job, and school--I am not presently active in any Community Organizations.

In what recreations do you engage? Outdoor Soft-ball

Indoor Bowling and Sewing

Have you had experience with such Youth Organizations as Scouts, Campfire, etc? Several years ago I was active with the Catholic Youth Council. Also, I have done volunteer work at a summer camp.

Are you left handed? NA or right handed? Yes

Would you arrange for a personal interview? I am available for a personal interview whenever I am called.

Military Status NA

II. EDUCATION AND PROFESSIONAL TRAINING

High School St. Thomas Aquinas Address 845 Duhn Road Total Units 16

Diploma Yes Yes No Dates of Attendance 1961-1965

College attended Name & Location	Date of Attendance	Degree	Area of Specialization	Sem. Hrs. In Major	Sem. Hrs. in Educ.	Total Hrs. Credit
Florissant Valley Community College	1966 1970-71	NA	Liberal Arts	18	---	18
University of Mo.	attend-ing	BS	Elementary Ed	87	41	128
Grand Total Credits 128 (Credits from FVCC and UMSL)						

Please mark appropriate boxes:

Do you hold a certificate valid in Missouri? Yes ☐ No ☒

Elem. 2 Yr. ☐ Life ☐ Secondary 2 Yr. ☐ Life ☐ K-12 Life ☐

If not, have you applied for a Missouri Teacher's Certificate? Yes ☒ No ☐

List any other teaching certificates you may hold and give State NA

Have you ever had a teaching certificate revoked? NO If so, explain with attached statement.

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Give last date in school Presently Enrolled Do you plan to continue graduate work? Yes

If so, in what field? Language Arts Place Webster College

Date Available for employment May 18, 1973

III. TEACHING EXPERIENCE

Name and Location of School or Institution	Grade or Subjects	Dates	No. of Yrs.	No. Teachers in System	Salary
NA					

Total years experience in Elementary Schools? NA Junior High School? NA

Senior High School? NA. Please indicate the grade level and/or subject area in which your observation and student teaching was done. Grade Level 3 Subject Area (if applicable) NA

Add by letter any additional information that will give a more complete estimate of your training, experience, character and ability. Credentials from placement office should be sent at earliest convenience to Personnel Office.

090

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V. GENERAL FACTS

Have you failed of re-election to a teaching position? Where ? NA
If yes, explain with attached statement. ____

Why do you wish to leave your present position? or
Why do you wish to return to teaching? To teach

Why do you wish to teach here? I am presently student teachin School District at Black Jack like the Hazelwood School District, the children and met. Also, the Hazelwood School District is convenie

What salary are you receiving now? $4700 What salary do you expect

VI. PROFESSIONAL GROWTH

What professional magazines do you read? The Instructor, Education Digest, Teacher, Psychology Today

What books have you read during the past year? The Open Classroom (Kohl), The Art of Teaching (Highet), 36 Children (Kohl), How Children Learn (Holt), The Way It Spoozed to Be (Herndon), Developing Questioning Techniques (Carin), Values and Teaching (Raths), Understanding Piaget (Pulaski), Teaching Elementary School Mathematics (Underhill)

Of what professional organizations are you a member? None

What professional recognition have you had? No

Extent of travel Kansas City, Mo.; Omaha, Nebraska; Chicago, Ill., Fort Dodge, Iowa

VII. FOR APPLICANTS DESIRING ELEMENTARY POSITIONS

What musical instruments do you play? A little piano

Applicant's comment concerning the retention of children in primary grades I believe a child should be retained if and only if all other means of instruction, counseling and conferences with parents and child have been exhausted. There should be clear evidence that the child will not profit--intellectually nor socially--by being promoted to the next higher grade.

VIII. FOR APPLICANTS DESIRING JUNIOR OR SENIOR HIGH SCHOOL POSITIONS

List activities you can direct? ----------

IX. ELEMENTARY AND SECONDARY APPLICANTS

List experience or training with the following:

Individualization of Instruction Student teaching in an open classroom, individualized learning situation.

Audio Visual Aids Learned to use many audio visual aides in methods courses taken at the University.

Programmed Instruction Learned about programmed instruction in a method course.

Initial Teaching Alphabet (ita) I saw the ita demonstrated in a reading methods course.

Behavioral (measurable) Objectives Wrote many behavioral objectives in methods courses.

SECTION IX., CONT.

Differentiated Staffing None

Modern Mathematics Have taught and I am now teaching modern mathematics.

Ability Grouping (Reading) Knowledge gained in Teaching Reading course, and have gained knowledge and experience as a student teacher.

Team Teaching I was half of a team teaching situation for elementary PE.

Non-Graded Gained knowledge through reading about non-graded schools.

Group Guidance None

Supervised Study None

Please comment on any other special training and/or experience(s) which you have had.
I worked one summer as a volunteer teacher of shorthand and typing to boys and girls between the ages of 9 through 14. I have taught PE on a team teaching basis to seventh grade boys at Ascension Catholic School. I spent a portion of one semester teaching math--two hours a week--to first graders at Cool Valley Elementary School. I haven't done any substitute teaching, because of my part-time job and school schedule.

X. RECENT REFERENCES

(Give at least five references, including especially superintendents, principals, and fellow teachers with whom you have taught, who have first-hand knowledge of your character, personality scholarship and teaching ability.)

Name	Address	Official Position
Jeannie Donovan	Black Jack Elementary School	Third Grade Teacher
Anne Lally	UMSL, Student Teaching Office	Stud. Teacher Supervisor
Norma Bruce	330 N. Florissant	Supervisor
Vivian Conley	8005 Courtney, 63140	Secretary
Father Siebert	8122 Scott, 63140	Pastor

All spaces applicable must be completed in full.

The statements made herein are true to the best of my knowledge and belief:

DATE April 24, 1973 SIGNATURE Georgia M. Shaw

(Completed application should be returned to Personnel Office)

UNIVERSITY PLACEMENT OFFICE
205 ADMINISTRATION BUILDING
UNIVERSITY OF MISSOURI-ST. LOUIS
ST. LOUIS, MISSOURI

TO: Hazelwood School District
ATTN: DIRECTOR OF PERSONNEL
15955 New Halls Ferry Road
Florissant, Mo. 63031

DATE: 5/1/73

The record of GEORGIA M. SHAW is sent to you at:
NAME

X Your Request

___ Candidate's Request

___ Our Request

___ Other _____
NAME

___ Record is in the inactive file and may not be up to date-
_____ file.

J. F. Palmer, Director
University Placement Office

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The attached credentials may be destroyed, if not needed by your office.

Please fill in the information below and return this form to:

University Placement Office
205 Administration Building
University of Missouri-St. Louis
St. Louis, Missouri 63121

Check:

___ We have employed the above-named candidate.
POSITION: Field _____ Level or Assignment _____

SALARY: Per Month _____ For 9 Months _____

Per 12 Months _____

___ We are not employing the above-named candidate.

_____
School, College or Company

_____
Address

399

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UNIVERSITY OF MISSOURI - ST. LOUIS

PERSONAL DATA FORM

PLEASE TYPE

Name SHAW, Georgia M. ----- (LAST / FIRST / M.I. / MAIDEN) Marital Status Single

Present Address 5723 Roman Court (NUMBER / STREET) Telephone 521-5901

First Name of Spouse --------

Number of Dependents -------

St. Louis (CITY) Mo. (STATE) 63140 (ZIP) Height 5 ft. 2 1/2 in.

Weight 125 pounds

Date of Birth June 11, 1947 U.S. Citizen Macon, Miss.

Physical Limitations None

Selective Service Class. ---------- Parent's Name George and Mollie Pearl Shaw Telephone 521-5901

Parent's Address 5723 Roman Court (STREET) St. Louis, Mo. 63140 (CITY & STATE / ZIP)

400

NAME OF COLLEGE	MAJOR	DEGREE	DATES
University of Missouri - St. Louis	Elementary Education	B.S. Educ.	May, 1973
Others:			

Honors, Honorary and Professional Organizations Dean's List - Winter Semester 1972

Papers Published

Sports, Hobbies, Social Organizations Sewing, Knitting, Bowling, Cooking

Types of Teaching Certificates Held or Date Expected Missouri Certification State (s) May, 1973

Undergraduate Grade Point Average (Cumulative) 2.0 (Major) 2.8

Percentage of College Expenses Earned all How? part-time job

401

004

Rev 3/71 UMSL - 68

c Preference 1st choice St. Louis Co.& City 2nd choice East St. Louis, Illinois

ation Date May 17, 1973 Availability Date May 18, 1973

EXPERIENCE

A. Professional Experience: (Teaching, Admin., Superv., Dir., etc.)

PLACE	DATES	SUBJECT OR GRADES TAUGHT	TYPE OF POSITION
Black Jack Elementary School	Jan. 22 to May 11	Grade 3	Student Teaching

B. Other Experience: Volunteer work, 1969, Mount Olive Baptist Church's Summer Camp Subjects taught were shorthand and typing to ages 8 through 14.

UNDERGRADUATE COURSES

Courses in Major Field (Title Only)	Sem Hrs.	Education Courses (Title Only)	Sem Hrs.	Total Credit Earned	Sem Hrs.	Total Credit Earned	Sem Hrs.
		School in Contemporary Society	3	English	21	Economics	0
		Organization, Management & Techniques	3	French	0	Geography	3
		Children's Literature & Languare Arts	3	German	0	History	9
		Teaching Science	3	Spanish	0	Political Science	3
		Teaching Social Stud.	3	Other	0	Psychology	9
		Teaching Math	3	Mathematics	12	Sociology	3
		Psychology of Teaching	3	Music	5	Philosophy	3
		Teaching Reading	3	Physical Ed.	0	Sp. Fields	0
		Elementary School Music	2	Biological Sci.	5		
		Art Activities	3	Chemistry	0	Others:	
		Health Education	3	Physics	0	Shorthand & Accounting	12
		Physical Ed Activities	3			Business Administration	3
		Student Teaching	6			Geology	4
						Speech	3

Your signature releases this information to prospective employers.

March 1, 1973
Date

Georgia M. Shaw
Signature

005

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PLEASE TYPE ALL INFORMATION

8001 NATURAL BRIDGE ROAD
ST. LOUIS, MISSOURI 63121

To: Dr. Rea (Faculty member)

Dear Sir:
I am enrolling with the Placement Office for a position in: (Check all that apply) ☒ Education ☐ Business ☐ Graduate School
Would you be so kind as to fill out the following form and send it directly to the Placement Office.

I had the following courses(s) under you:

SUBJECT	GRADE	SEMESTER
Teaching Math	C	Fall 1971

Student's Signature Georgia M. Shaw

Student's Name Georgia M. Shaw Date March 1, 1973

Major Elementary Education Date degree received May 17, 1973

CONFIDENTIAL

This form provides for two types of evaluation: (1) ratings on specific traits, and (2) information about the registrant which you believe would be valuable to employing officials. If possible, use both types of evaluation.

Rating Scale

(If you wish to use the rating scale, please check each of the qualities in the appropriate column. Rate the individual in relation to other persons you have known who might be considered applicants for a similar type of position. You may add other qualities that seem important.)

QUALITIES	Superior	Above Average	Average	Below Average	Inadequate Basis for Judgment
Scholarship			X		
Effectiveness in speaking		X			
Effectiveness in written expression			X		
Ability to work with others	X				
Initiative		X			
Appearance, manner, and poise		X			
Friendliness	X				
Probable vocational success			X		
Dependability		X			

(Please give below a statement concerning this applicant's knowledge of subject, work, social attitudes, success in relation with students, fellow workers and the community, and other outstanding characteristics and abilities.) PLEASE TYPE as ink does not xerox well.

Georgia is certainly making every attempt to benefit her career as a teacher. She voluntarily entered a class project whereby she served in a para-professional role with a teacher in a nearby district while in my class. Her teacher reported her quite capable of carrying out cooperative plans with individual pupils, small groups, and the whole class. Her quiet, calm manner will no doubt be found to be desirable in many situations.

006

Faculty Signature Robert E Rea Department Elementary Education

Position Associate Professor of Education Date March 28, 1973

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8001 NATURAL BRIDGE ROAD
ST. LOUIS, MISSOURI 63121

PLEASE TYPE ALL INFORMATION

To: Mrs. Jeannie Donovan, Cooperating Teacher (Faculty member)

Dear Sir:

I am enrolling with the Placement Office for a position in: (Check all that apply) ☒ Education ☐ Business ☐ Graduate School

Would you be so kind as to fill out the following form and send it directly to the Placement Office.

I had the following courses(s) under you:

SUBJECT	GRADE	SEMESTER
Student Teaching Black Jack Elementary School, Grade 3		Winter 1973

Student's Signature Georgia M. Shaw

Student's Name Georgia M. Shaw Date March 1, 1973

Major Elementary Education Date degree received May 17, 1973

CONFIDENTIAL

This form provides for two types of evaluation: (1) ratings on specific traits, and (2) information about the registrant which you believe would be valuable to employing officials. If possible, use both types of evaluation.

Rating Scale

(If you wish to use the rating scale, please check each of the qualities in the appropriate column. Rate the individual in relation to other persons you have known who might be considered applicants for a similar type of position. You may add other qualities that seem important.)

QUALITIES	Superior	Above Average	Average	Below Average	Inadequate Basis for Judgment
Scholarship	X				
Effectiveness in speaking	X				
Effectiveness in written expression	X				
Ability to work with others	X				
Initiative		X			
Appearance, manner, and poise		X			
Friendliness	X				
Probable vocational success	X				
Dependability	X				

(Please give below a statement concerning this applicant's knowledge of subject, work, social attitudes, success in relation with students, fellow workers and the community, and other outstanding characteristics and abilities.) PLEASE TYPE as ink does not xerox well.

Miss Shaw has a thorough knowledge of all subject matter that she teaches in the classroom. Through effective planning and motivation she has been able to provide for individual differences of the children.

She has good rapport with the children, but she also is able to use effective methods of discipline. She is a willing worker and will do anything that is suggested. She has also shown initiative in making individual projects, games, learning packets, and other aids, to help the individual child.

I feel Georgia has the qualities and capabilities which when fully developed will make her a very effective teacher.

Faculty Signature Jeannie Donovan Department Black Jack Elementary School

Position Cooperating Teacher Third Grade Date March 11, 1973

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[870] PLAINTIFF'S EXHIBIT 53

1970
CENSUS OF
POPULATION

GENERAL SOCIAL
AND ECONOMIC
CHARACTERISTICS

MISSOURI

Issued March 1972
[Excerpts]

Table 81. Ethnic Characteristics for Areas and Places: 1970

Standard Metropolitan Statistical Areas / Places of 50,000 or More (or Central Cities) / Urban Balance / Urbanized Areas / Places of 50,000 or More	Standard metropolitan statistical areas - Con. St. Louis Missouri Portion St. Louis
NATIVITY AND PARENTAGE	
Total population	622,234

MISSOURI 27-283

Table 86. Occupation of Employed Persons for Areas and Places: 1970

Standard Metropolitan Statistical Areas / Places of 50,000 or More (or Central Cities) / Urban Balance / Urbanized Areas / Places of 50,000 or More	Standard metropolitan statistical areas - Con. St. Louis Missouri portion St. Louis

EMPLOYED PERSONS 16 YEARS OLD AND OVER	
Professional, technical and kindred workers	
Teachers, elementary and secondary schools	5,238

MISSOURI 27-303

Table 91. Social Characteristics of the Negro Population for Areas and Places: 1970-Continued

Standard Metropolitan Statistical Areas / Places of 50,000 or More (or Central Cities) / Urban Balance / Urbanized Areas / Places of 50,000 or More	Standard metropolitan statistical areas - Con. St. Louis Missouri portion St. Louis
PLACE OF BIRTH	
Total population	254,268
YEARS OF SCHOOL COMPLETED	
Male, 25 years old and over	
College 4 years or more	1,693
Female, 25 years old and over	
College 4 years or more	2,655

MISSOURI 27-323

Table 93. Occupation and Earnings of the Negro Population for Areas and Places: 1970-Continued

Standard Metropolitan Statistical Areas / Places of 50,000 or More (or Central Cities) / Urgan Balance / Urbanized Areas / Places of 50,000 or More	Standard metropolitan statistical areas - Con. St. Louis Missouri Portion St. Louis

OCCUPATION	
Professional, technical and kindred workers	
Teachers, elementary and secondary schools	2,182

Table 119. Social Characteristics by Counties: 1970–Continued

COUNTIES	St. Louis
NATIVITY, PARENTAGE, AND COUNTRY OF ORIGIN	
Total population	951,353

Table 120. Education and Family Characteristics for Counties: 1970–Continued

COUNTIES	St. Louis
YEARS OF SCHOOL COMPLETED	
Male, 25 years old and over	
College: 4 years or more	53,122
Female, 25 years old and over	
College: 4 years or more	29,407

Table 122. Occupation and Earnings for Counties: 1970–Continued

COUNTIES	St. Louis
OCCUPATION	
Professional, technical and kindred workers	
Teachers, elementary and secondary schools	14,187

Table 125. Social Characteristics of the Negro Population for Counties: 1970–Continued

Counties with 400 or More Negro Population	St. Louis
PLACE OF BIRTH	
Total Population	45,579
YEARS OF SCHOOL COMPLETED	
Male, 25 years old and over	
College: 4 years or more	762
Female, 25 years old and over	
College: 4 years or more	836

Table 127. Occupation, Earnings, and Industry of the Negro Population for Counties: 1970–Continued

Counties with 400 or More Negro Population	St. Louis
OCCUPATION	
Professional, technical and kindred workers	
Teachers, elementary and secondary schools	815

PLAINTIFFS' EXHIBIT NO. 56

SECOND ANNUAL REPORT

of the

St. Louis County, Missouri

PUBLIC SCHOOLS

to the

County Board of Education

for the

School Year 1952-1953

Issued by

George W. Vossbrink, Superintendent

St. Louis County Public Schools

Clayton 5, Missouri

October 1, 1953

BEST COPY AVAILABLE

SCHOOL ENROLLMENTS

In St. Louis County

GROW and GROW

1942 - 1943
48,904

1948 - 1949
50,722

1949 - 1950
53,307

1950 - 1951
57,769

1951 - 1952
63,769

1952 - 1953
71,060

SECOND ANNUAL REPORT

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St. Louis County, Missouri

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to the

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George W. Vossbrink, Superintendent
St. Louis County Public Schools
Clayton 5, Missouri

October 1, 1953

PUPIL-TEACHER DATA

Tables from Reports of Superintendents for the 1952-1953 School Year.

ENROLLMENT
Kindergarten, Grades 1 to 8, High School
Summary by Grades, Kindergarten to Twelfth
Summary, Resident, Non-Resident, Boys, Girls
Summary, Attendance

TRANSPORTATION OF PUPILS

NUMBER OF GRADUATES, Eighth Grade, High School

ENUMERATION

NUMBER OF TEACHERS
Kindergarten, Grades 1 to 8, High School
Men, Women, Colored, White

SUMMARY OF PUPIL-TEACHER DATA

COMPARATIVE DATA

CLASSIFICATION AND ORGANIZATION, etc.

TOTAL ENROLLMENT—Kindergarten to 12th Grade

School District	Kinder-			
Brentwood (W)	256	1,181		
Brentwood (C)	14			
Clayton (W)	254	1,[illegible]		
[illegible] (C)	7			
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
Parkway Consolidated School Dist. No. 92 (W)	485	2,251		
Parkway Consolidated School Dist. No. 1 (C)		57		
Hancock Place	232	1,[illegible]		
Jennings	176	8[illegible]		
[illegible] (C)		1,[illegible]		
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
Maplewood-Richmond Heights (W)	208	1,[illegible]		
Maplewood-Richmond Heights (C)	21	207		
[illegible]	[illegible]			
Normandy (W)	[illegible]	[illegible]		
Normandy Heights (C)	[illegible]	[illegible]		
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
Ritenour (W)	1014	4,[illegible]	1,[illegible]	
Ritenour (C)	43	237		
Riverview (W)	[illegible]	[illegible]		
Riverview (C)	[illegible]	35		
School District R-5	245	1,[illegible]		
University City	204	4[illegible]		
[illegible]	[illegible]			
Valley Park	[illegible]	5[illegible]		
Webster Groves (W)	665	3,[illegible]	1,[illegible]	
Webster Groves (C)	42	304	101	
Wellston (W)	147	[illegible]		
Wellston (C)	10	[illegible]		
[illegible]	[illegible]			
TOTAL PUBLIC SCHOOL DISTS. (W)	7[illegible]	31,[illegible]	3[illegible]	
TOTAL PUBLIC SCHOOL Dists. (C)	168	2,[illegible]	[illegible]	
Non-High School Districts				
Fern Ridge (W)		371		
Fern Ridge (C)		15		
Kirkwood R-1		831		
Meacham Park Cons. No. 2	51	5[illegible]		
Webster [illegible]	14	72		
[illegible]	[illegible]			
Sunset (W)	[illegible]	[illegible]		
Sunset (C)	[illegible]	141		
Valley Park No. 7	[illegible]	477		
TOTAL ELEMENTARY DISTS. (W)	[illegible]	[illegible]		
TOTAL ELEMENTARY DISTS. (C)	[illegible]	150		
TOTAL ALL DISTRICTS (W)	8,212	43,[illegible]	13,[illegible]	57,[illegible]
TOTAL ALL DISTRICTS (C)	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL, White and Colored	8400	48,440	14,[illegible]	71,[illegible]

SUMMARY OF ENROLLMENT—Kindergarten to Eighth Grade

School District	Une.	Kdg.	1st	2nd	3rd	4th	5th	6th	7th	8th	Total
[illegible]		256	209	170	163	151	133	144	122	114	1462
[illegible]	2	71	73	59	53	55	50	49	63	65	526
[illegible]		156	210	127	141	150	142	116	95	97	1234
Brentwood (W)	1	226	201	151	149	170	136	107	116	99	1457
Brentwood (C)		13	14	13	14	19	9	11	6	3	103
Clayton (W)		276	241	197	183	167	159	144	121	115	1653
Clayton (C)		6	7	5	8	5		5	2	2	40
Eureka R-69 (W)			257	211	214	213	221	178	151	172	1847
Eureka R-6 (C)			5	6	2	5	3	6	4	5	35
Ferguson-											
Florissant R-2 (W)	6	485	402	345	342	352	327	283	242	198	2676
(C)			13	19	16	7	15	6	14	5	95
[illegible]		172	167	134	101	103	144	127	108	112	1393
[illegible]		172	174	110	137	117	119	94	97	72	1007
[illegible]			170	173	135	145	149	125	123	109	1121
[illegible]											
Jennings R-7 (W)	7	744	584	432	497	475	409	376	341	310	4217
Jennings R-7 (C)		45	57	44	39	51	42	43	54	41	416
[illegible]		241	212	174	196	163	176	147	126	93	1570
Maplewood-											
Richmond Heights (W)		247	230	209	217	213	217	163	171	165	1843
(C)		21	29	24	23	25	20	23	27	27	239
Normandy (W)			52	48	61	47	53	42	36	68	407
(C)			10	2	5	6	3	4	7	2	39
[illegible]		227	209	186	170	185	170	181	130	114	1611
Normandy	36	701	615	559	534	518	456	443	441	412	4814
[illegible]		249	241	213	224	201	197	192	156	127	1977
Ritenour (W)	15	1016	941	657	599	612	575	515	513	421	5813
Ritenour (C)		43	35	28	26	24	32	24	20	12	247
Riverview (W)		57	54	196	227	225	191	167	140	85	1901
Riverview (C)			3	2	1	2	3	4		3	18
School Dist. R-5		253	212	157	164	143	150	125	103	112	1401
University City		784	665	642	519	565	573	469	444	410	5043
Valley Park			94	73	74	66	63	67	65	65	562
Webster Groves (W)		671	591	507	467	466		404	376	315	4424
Webster Groves (C)		42	55	41	45	16	36	33	32	28	369
Wellston (W)		149	151	117	138	121	116	111	55	98	1256
Wellston (C)		10	13	17	15	17	19	13	21	16	144
[illegible]		174	170	201	177	119	142	107	106	87	1007
[illegible]											
[illegible]											
U.S. Dists. (W)	67	7362	7329	5705	5637	5610	5533	4607	4410	3912	51,238
(C)		288	405	297	302	319	331	247	302	251	2961
[illegible]			63	42	54	42	43	33	19	27	303
(C)			4	4		3		1	2	1	15
[illegible]			16	59	65	139	85	69	95	85	811
[illegible]											
[illegible]		91	77	71	67	69	73	63	53	41	633
[illegible]		14	10	9	13	6	20	8	9	3	93
Sunset (W)			10	9	15	3	9	7	7	4	70
(C)			27	15	21	14	16	20	19	11	143
[illegible]		93	58	56	71	56	48	29	30	23	664
[illegible]		559	441	311	410	702	511	311	315	197	4068
[illegible]			21	19	21	17	23	21	21	13	156
Total All Dis.	(W) 67	8212	7777	6153	6226	6103	5810	5019	4823	4060	53,821
	(C)	188	436	356	363	365	347	318	353	263	3019
Grand Total Enrollment	67	8400	8213	6468	6319	6468	6163	7376	4976	4262	56,840

SUMMARY OF ENROLLMENT—9th to 12th Grades

School District	9th Grade	10th Grade	11th Grade	12th Grade	Total H. S.
Affton	154	93	93	91	431
Bayless	63	65	62	60	250
Berkeley	91	74	65	67	297
Brentwood	112	75	61	59	307
Clayton	115	147	144	125	531
Eureka R-6	175	153	97	106	529
Ferguson-Florissant R-2	249	195	168	119	731
Hancock Place	105	104	106	116	431
Jennings	112	80	67	64	323
Kinloch (C)	73	50	31	28	182
Kirkwood (W)	294	272	219	267	1052
Kirkwood (C)	31				31
Ladue	177	146	98	93	514
Maplewood-Richmond Heights	108	103	102	98	411
Mapleridge Heights	30	23	16	12	81
Normandy	129	93	92	70	384
Pattonville R-3	420	338	316	312	1386
Parkway	122	115	92	81	410
Riverview	134	103	94	82	413
School District R-8	170	113	87	73	443
University City	93	70	61	49	273
Valley Park	361	353	321	291	1326
Webster Groves (W)	65	39	54	24	182
Webster Groves (C)	107	108	108	104	427
Wellston	110	110	96	45	361
West Walnut Manor	105	91	74	71	341
TOTAL HIGH SCHOOL (W)	93	105	70	61	329
TOTAL HIGH SCHOOL (C)	4145	3501	3132	2771	13549
GRAND TOTAL HIGH SCHOOL	332	171	107	67	677
	4357	3672	3239	2838	14226

SUMMARY OF ENROLLMENT—Resident, Non-Resident, Boys, Girls

School District	Resident Boys	Resident Girls	Resident Total	Non-Resident Boys	Non-Resident Girls	Non-Resident Total	Total
Affton	1093	962	2071	2	4	7	2078
Bayless	425	338	766	1		1	767
Berkeley	802	701	1503	5	3	8	1511
Brentwood	849	893	1742	1	1	2	1744
Hancock Place	48	47	95				95
Clayton (W)	1044	1023	2067	77	76	153	2220
Clayton (C)	9	11	20	17	9	26	46
Eureka R-6 (W)	1078	940	2018	84	74	158	2176
Eureka R-6 (C)	19	16	35				35
Ferguson-Florissant R-2 (W)	1997	1748	3745	30	34	64	3809
Ferguson-Florissant R-2 (C)	55	42	97				97
Hancock Place	871	833	1704	4	13	17	1721
Jennings	780	671	1451	13	11	24	1475
Kinloch (C)	716	603	1319	2	6	8	1327
Kirkwood (W)	2615	2505	5120	21	30	59	5179
Kirkwood R-7 (C)	315	219	534	1	5	13	547
Ladue	978	835	1813	37	56	93	1906
Maplewood-Richmond Heights (W)	1432	1279	2711	53	57	110	2711
Maplewood-Richmond Heights (C)	111	115	226		1	1	227
Mapleridge Heights	173	282	455	1	3	4	459
Mapleridge Heights (C)	27	23	50				50
Normandy	964	857	1821	12	12	24	1845
Pattonville R-3	3171	3071	6242	3	2	5	6247
Parkway	1102	1102	2204	21	21	46	2250
Riverview	3579	3495	7074	4	5	9	7271
School District R-8	1197	1097	2294	17	17	34	2417
University City	1142	1120	2262	32	31	63	2325
Valley Park	18	18	36				36
Webster Groves (W)	1533	1533	3066	3		3	3069
Webster Groves (C)	3130	3131	6327	22	23	45	6372
Wellston	360	346	706	10	12	22	728
West Walnut Manor	2691	2687	5378	11	11	22	5400
TOTAL HIGH SCHOOL (W)	2341	2341	4682	112	112	224	4906
TOTAL HIGH SCHOOL (C)	3	3	6				6
GRAND TOTAL HIGH SCHOOL	3344	3344	6688	112	112	224	6912
Fee Basis (W)	102	102	204	1	1	2	206
Fee Basis (C)	5	10	15				15
[illegible]	54	53	107	2	2	4	111
[illegible]	3	3	6				6
[illegible]	1	1	2				2
[illegible]	3	4	7				7
[illegible]	71	63	134	2	3	7	141
[illegible]	6	6	12				12
[illegible] (W)	1326	1302	2628	10	6	16	2644
[illegible] (C)	77	74	151	2	3	7	158
[illegible]	1403	1376	2779	12	9	21	2800
[illegible]	1	1	2				2
[illegible]	1404	1377	2781	12	9	21	2802
[illegible]	3	3	6				6
[illegible]	1407	1380	2787	12	9	21	2808

ATTENDANCE DATA

School District	Length of Term	Total Days Attendance K to 12	Average Number Belonging	Daily Attendance Grades 1 to 8	Grades 9 to 12	Total Kdg. to 12
Affton	180	345,619	2052	1175.9		
Bayless	180	123,937	715	408.7	215	623
Berkeley	180	259,917	1521	952.5	212.8	1330.3
Brentwood	180	275,709	1676	994.7	266.8	1451.1
Clayton	180	306,201	1716	1136	587	1723
Eureka R-6	185	317,702		1501.2	491.2	1992.4
Ferguson-Florissant R-2	180	726,727	3942	2510.4	675.3	3185.7
Hancock Place	200	213,567	1155	807	531	1338
Jennings	181	215,695	1258	753.4	351.5	1104.9
Kinloch	180	264,734		927.6	367.3	1294.9
Kirkwood R-7	184	543,746	3002	2195.4	577.9	2773
Ladue	185	234,682	1274	1139	290.6	1429.6
Maplewood-Rich. Hts.	185	462,154	2445	1652.2	665	2317
Maryland Heights	185	87,441		462.6	302	764.6
Meniville R-9	180	327,915	1755	1139	357	1496
Normandy	185	597,856	4706	2170.3	1211.7	3382
Pattonville R-3	180	460,547	2564	1677.3	1006	2683.3
Ritenour	184	1,174,744	7037	4,777.5	1,391.9	6,169.4
Riverview	200	566,315	2724	1955.1	1091.9	3047
School District R-8	185	219,203	85	940.6	264.9	1205.5
University City	180	111,021	687	377.1	193.2	570.3
Valley Park	180	81,478	452	282.2	107.1	389.3
Webster Groves	180	1,008,735	5716	3879.2	1070	5,249.2
Wellston	200	212,204	1064	841.2	302.7	1243.3
West Walnut Manor	180	126,648	731	508	193	1179
Total [illegible] Districts		10,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[

NUMBER OF EIGHTH GRADE AND HIGH SCHOOL GRADUATES

School District	8th Gr. Last Yr.	No. ent. H.S.	8th Gr. This Yr.	H.S. Last Yr.	No. ent. Coll. & U.	H.S. Grad. This Yr.
Affton	112	112	114	93	9	93
Bayless	52	49	55	41	3	40
Berkeley	58	58	73	44	6	39
Brentwood (W)	89	80	87	53	24	58
Brentwood (C)	10	10	1			
Clayton (W)	125	125	113	105	125	120
Clayton (C)	4	4	2			
Eureka R-6 (W)	104	98	151	76	10	64
Eureka R-6 (C)	4	1	5			
Ferguson-Floriss. R-2 (W)	191	187	183	118	41	126
Ferguson-Floriss. R-2 (C)	5	5	4			
Hancock Place	106	92	112	89	5	95
Jennings	74	71	63	60	14	65
Kinloch (C)	55	53	94	43	17	21
Kirkwood R-7 (W)	265	263	264	223	170	230
Kirkwood R-7 (C)	36	34	29			
Ladue	75	73	90			51
Maplewood-Rich. Hts. (W)	182	180	157	143	65	147
Maplewood-Rich. Hts. (C)	21	21	25			
Maryland Heights (W)	29	25	40	21	1	14
Maryland Heights (C)			6			
Meadville R-9	113	97	109	44	6	34
Normandy	339	324	365	256	65	242
Parkeville R-3	102	96	127	44	6	52
Ritenour (W)	291	304	365	241	84	275
Ritenour (C)	5	5	11			
Riverview (W)	115	91	98	40	9	61
Riverview (C)	5		7			
School District R-8	65	63	90			
University City	376	367	437	309	53	272
Valley Park	55	47	50	34	5	30
Webster Groves (W)	230	202	329	253	133	206
Webster Groves (C)	51	47	35	30	17	40
Wellston (W)	87	68	84	72	10	62
Wellston (C)	5	5	11			
West Walnut Manor	77	77	80	67	6	54
Total H.S. Districts (W)	3498	3124	3697	2403	1017	2016
Total H.S. Districts (C)	203	193	230	58	34	61
Fern Ridge (W)	21	20	22			
Fern Ridge (C)	1	1	1			
Riverwood R-2	67	60	73			
Akron Ridge Cons. No. 2	35	34	40			
Weber	13	13	4			
Reuber No. 17 (W)	4	3	2			
Reuber No. 17 (C)	26	22	11			
Reuber No. 73 (C)	13	12	12			
Total Non-H.S. Dists. (W)	125	117	137			
Total Non-H.S. Dists. (C)	27	13	12			
Total All Districts (W)	3623	3430	3551	2403	1037	2016
Total All Districts (C)	232	206	242	58	34	61
GRAND TOTAL	3855	3636	3793	2461	1071	2077

ENUMERATION AS OF MAY, 1953

(Taken from the Office of the County Clerk)

Name of District	White Boys	White Girls	Colored Boys	Colored Girls	Blind Boys	Blind Girls	Deaf Boys	Deaf Girls	Total
High School Districts									
Affton	1774	1559			1				3334
Bayless	675	623							1298
Berkeley	654	700	8	11	1		3	1	1378
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			[illegible]
[illegible]	[illegible]	[illegible]							[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			[illegible]		[illegible]
[illegible]	1302	1317	27	30	1	3	2	2	2684
[illegible] Maplewood-Rich. Hts.	2129	1916	148	129					4246
Maryland Heights	362	350	35	25	1		3		740
Meadville Rd.	1403	1291							2617
Normandy	4419	4275	2	43			2	3	8744
Parkeville R-3	1196	1027	4	6					2231
Ritenour	5184	4274	142	140	1		1	1	9683
Riverview	1562	1418	19	10					3009
School District R-8	1170	1010							2255
University City	3618	3729	2	1					7630
Valley Park	468	432	6	3					909
Webster Groves	3527	3451	253	264					7265
Wellston	705	708	61	63					1539
West Walnut Manor	967	951							1918
Non-H.S. Districts									
Fern Ridge	282	272	5	10			3		573
Riverwood	736	670							1406
Akron Ridge Cons. No. 2	501	496	10	6					1013
Weber	102	114							216
Reuber No. 17	47	30	107	110					304
Rathbuth	20	11							31
Jefferson Dist. No. 73	502	451							953
GRAND TOTAL	46,293	43,563	2032	2050	7	4	15	6	93,537

Summary of School Enumeration

High school districts

	[illegible]	Total	[illegible]	[illegible]	[illegible]
Boys	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Girls	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	36,033	3,557	11	19	39,620

NON-HIGH SCHOOL DISTRICTS

Boys	2,221	125	3	2,349
Girls	2,042	125		2,168
Total	4,263	251	3	4,517

TOTAL ALL DISTRICTS

Boys	46,293	2,062	7	15	48,377
Girls	43,063	2,086	4	7	45,160
Total	89,356	4,148	11	22	93,537

NUMBER OF TEACHERS
ELEMENTARY AND HIGH SCHOOL

	Kdg.	Elem'ty	H. School	Total	Supt.	Total
Affton	4	40	27	67	1	81
Bayless	1	17½	15½	34	1	35
Bradley	3	36	14	53	1	54
Brentwood	4½	43½	18	67	1	68
Clayton	9	73	39	121	1	122
Ferguson R-2		46	20	66	1	67
Florissant-Normandy R-2	7	98	32	137	3	140
Hancock	4	41	22	67	1	68
Jennings	3	40	20	63	1	64
Kinloch		25	9	34	1	35
Kirkwood R-7	13	157	39	209	1	210
Kirkwood R-7	13	157	35	205	1	210
Ladue	7	65	24	96	1	97
Maplewood-Richmond Heights	5½	96½	34	136	1	139
Maryland Heights		10	8	18	1	19
McKinley R-9	5	48	15	68	1	69
Normandy	14	152	67	233	1	234
Pattonville R-3	4	50	13½	67½	1	68½
Ritenour	10	109	43	225	3	228
Riverview	5	44	21	70	1	71
School District R-8	3	33	13	54	1	55
University City	14	177	74	265	2	267
Valley Park		15	11	26	1	27
Webster Groves	11	163	77	251	1	252
Wellston	2	41	20	63	1	64
West Walnut Manor	3	31½	19	53½	1	54½
TOTAL HIGH SCHOOL DISTS.	133	1722	600	2455	30	2539
Fern Ridge		10		10	1	11
Hazelwood R-1		26		26	1	27
Mason Ridge Cons. No. 2	2	18		20	1	21
Weiler		4		4		4
Scudder No. 17		6		6		6
Jefferson Barracks No. 72	1	16		17		17
Total Non-H.S. Districts	3	80		83	3	86
GRAND TOTAL	141	1302	600	2042	33	2075

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NUMBER OF TEACHERS
MEN, WOMEN, COLORED, WHITE

	Kdg.	Elementary Men	Elementary Women	High School Men	High School Women	Total Men	Total Women	Negro	Total
Affton	4	3	14	17	10	20	24	1	45
Bayless	1	4	12½	6	6½	10	23	1	34
Berkeley	3	9	23	7	7	19	30	1	50
Brentwood (W)	4	7½	29½	7½	8¼	12	45	1	58
Brentwood (C)	½	1	2½			1	3		4
Clayton (W)	9	15	56	18	21	33	92	1	126
Clayton (C)			2				2		2
Eureka R-6 (W)		3	32	6	14	11	51	1	63
Eureka R-6 (C)		1	1			1	1		2
Ferg.-Flor. R-2 (W)	7	26	67	19	13	47	87	3	137
Ferg.-Flor. R-2 (C)		1	2			1	2		3
Hancock Place	4	6	35	9	13	19	54	1	74
Jennings	9	7	31	10	10	17	48	1	66
Kinloch (C)		2	24	3	6	5	32	1	38
Kirkwood R-7 (W)	12	17	121	19	17	36	150	1	187
Kirkwood R-7 (C)	1	3	16	2	1	5	18		23
Ladue	7	6	57	17	7	23	74	1	98
Maplewood-Rich. Heights (W)	5	18	70	19	15	37	99	1	137
Maplewood-Rich. Heights (C)	½	2	8½			2	9		11
Maryland Hts. (W)		2	6	4	4	6	12	1	17
Maryland Hts. (C)			2				2		2
Mehlville R-9	5	6	40	9	6	17	31	1	49
Normandy	14	18	121	29	38	47	180	4	231
Pattonville R-3	4	10	49	5	8½	15	61½	1	77½
Pierremont (W)	15	15	139	19	30	24	214	5	243
Pierremont (C)	1		3				4		4
Riverview (W)	3	10	31	14	7	24	72	1	97
Riverview (C)			1				1		1
School Dist. No. 3	3	8	19	9	4	17	27	1	45
University City	16	15	102	30	34	45	152	3	200
Valley Park		2½	13	4½	6	7	21	1	29
Web. Groves (W)	10	24	126½	27	33½	51	187	1	239
Web. Groves (C)	1	2½	13	12½	7	15	38	1	54
Wellston (W)	3	7	30	10	20	17	62	1	80
Wellston (C)		1	3			1	3		4
W. Walnut Manor	3	1	10½	6	11	10	28	1	39
Total U. S. Dists. (W)	134	253	1377	316	343	581	1826	29	2436
(C)	4	13½	77	15½	13	29	103	1	133
Fern Ridge (W)		1	8			1	11	1	13
Fern Ridge (C)			1				1		1
Richmond Hts.		3	63			3	67	1	71
Mason Rd. Con. No. 2		4	14			4	20	1	25
Welch		1	3			1	3		4
Sandler (W)			2				2		2
Sandler (C)		1	3			1	3		4
Joint Dist. No. 28	1	4	12			4	13		17
Total Non-U.S. Dists. (W)	3	13	66			13	63	3	81
(C)		1	4			1	4		5
Total All Districts (W)	137	266	1443	316	343	594	1889	32	2517
(C)	4	14½	81	15½	13	30	107	1	138
GRAND TOTAL	141	280½	1524	331½	356	624	1996	33	2655

—(3)—

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[1014] PLAINTIFF'S EXHIBIT 57

Business items may be numbered

Page No. 2

Continuation of Regular board meeting held November 20, 1954

Item No.

Change in fireproof regulations for stage

Mr. Grueninger brought to the attention of the Board a change in fireproof regulations governing construction of stages, which would necessitate extra expenditure to Jones-Kissner Company. Dr. Sunderman moved the extra be allowed and that the architect bring the exact amount to the attention of the Board at the next regular meeting. The motion was seconded by Mr. Grannemann.

Yea: Wehmer, Sunderman, Grannemann, Stevenson
Nay: None

Recommendation of $10,000 Bond for high school sec'y

Superintendent Kirby recommended that a bond of $10,000 be purchased for the secretary of the high school principal securing activity funds handled by her. The recommendation was approved on a motion by Mr. Grannemann and seconded by Mr. Stevenson.

Yeas: Wehmer, Sunderman, Grannemann, Stevenson
Nay: None

Bills

Current Bills presented were approved for payment. Motion made by Mr. Stevenson and seconded by Mr. Grannemann.

Yeas: Wehner, Sunderman, Grannemann, Stevenson
Nay: None

Organizations other than school affiliated groups using cafe

Superintendent Kirby presented the problem of organizations other than school affiliated groups using the cafeteria for dinners. It was decided to cooperate with community groups and permit such use of cafeterias but that in each instance a cafeteria cook must be present at the expense of the organization. The motion was made by Dr. Sunderman and seconded by Mr. Grannemann.

Yeas: Wehmer, Sunderman, Grannemann, Stevenson
Nay: None

Pupils driving motor vehicles to school

It was brought to the attention of the Board by Superintendent Kirby that high school pupils were driving motor vehicles to the school in increasing numbers. The matter was discussed considerably and the Superintendent was instructed to prepare a permit for pupils driving a motor vehicle to school, with recommendations that evidence must be submitted showingproper licensing of driver, liability and property damage insurance, and list of designated persons riding in the vehicle on a motion by Mr. Stevenson and seconded by Dr. Sunderman

Yeas: Wehmer, Sunderman, Grannemann, Stevenson
Nay: None

Colored Pupils

Superintendent Kirby informed the Board of property in the Distriact that had been rented to persons of the Negro race, but stated he had no knowledge as to whether they had children of school age. After deliberation the Superintendent was instructed to admit resident negro children, but in view of their being so decidedly in the minority, he was further instructed to offer payment of tuition to negro pupils to a school of more predominantly negro enrollments on a motion made by Dr. Sunderman and seconded by Mr. Grannemann.

Yeas: Wehmer, Sunderman, Grannemann, Stevenson
Nay: None

[1015] PLAINTIFF'S EXHIBIT 61

HAZELWOOD TEACHERS NOT CERTIFIED AT THE TIME OF APPLICATION

1. *Abla, Janice M.
2. *Abney, Beatrice H.
3. Anderson, Donna
4. Anderson, Margaret
5. *Andrae, Mary K.
6. *Appleby, Frederick S.
7. *Bittiker, Darlene J.
8. *Boone, Christine
9. *Brunstein, Judith
10. Burlein, Marlene Fuhlbrugge
11. *Burris, Jacqueline
12. Cambell, Donald
13. *Cheek, Deborah
14. Cherry, Deborah Ann
15. *Conklin, Lesley
16. *Corbin, Darlene
17. Craig, Linda
18. DeCristofar, Joseph
19. DePriest, Sue Ann
20. Dickinson, Roscoe
21. Dittmeier, Dorothy
22. Dole, Thomas Brader
23. Duke, William Raymond
24. Dunkley, Patricia
25. Dunn, Carole
26. Dunn, Deborah
27. Eckert, Judith
28. Ehrle, Ruth Ann
29. *Fast, Emily
30. *Ferguson, Georgia
31. Flaherty, Cheryl Jean
32. *Ford, Marsha Lee
33. *Gallagher, Mary
34. *Gates, Gregory L.
35. *Gilbert, Robert L.

36. *Groce, Judith A.
37. Gueldner, Carolyn
38. Hall, Leona
39. Hancock, Helen
40. Hartig, Claire
41. *Hickerson, Janet
42. *Howard, Charles
43. *Howard, Judith
44. *Hudnut, Nanette M.
45. *Johnson, Anita
46. Kay, Mary Ann (Bouas)
47. Kelso, Karen
48. Killen, Deborah
49. *Kirby, Kathleen
50. *Koziatek, Carol
[1016] 51. Lavalle, Betty
52. Lewis, Billy Jean
53. Lundy, Mary
54. Marshall, Valerie
55. Martensen, Dean
56. *Maxwell, Terry
57. *McFarland, Dennis
58. *Meador, Lloyd
59. Meadows, Sandra
60. Mitchell, Patricia
61. Moll, Dale
62. Mullins, Maxine
63. *Novitskie, Shirley
64. Nunley, Joanne
65. *Pannebocker, Shirley R.
66. *Parrish, Caryn
67. *Paulic, William
68. Pedigo, John
69. *Plummer, Robert
70. Pohl, Susan
71. *Pressman, Norman
72. *Prost, Elizabeth
73. Renda, Diane
74. Reilly, Emma
75. *Russell, Betty

76. *Russell, Margaret
77. *Sabados, Anna M.
78. *Satterfield, Gayle
79. Schelbe, Carole
80. Schwartz, Kathleen
81. *Share, Cynthia A.
82. *Sherer, David
83. Siegel, Faye H.
84. Smith, Donna Lee
85 *Smith, Mary
86. Stanfield, Pamela
87. *Taylor, Raymond
88. *Thomas, Oleta
89. *Thurow, Beverly
90. *Tieman, Margaret
91. Timkin, Lenore
92. *Vosmer, Joan
93. *Wachter, John
94. *Waite, Gerald
95. *Weinstein, Brenda
96. *Wessels, Joseph
97. Wiss, Rebecca
98. *Woodward, Anita J.
99. Woodward, Barbara
100. Zerlan, Dawne
101. *Ziegler, Joel

*Hazelwood teachers who were not certified at the time of job offer.

Supreme Court, U. S.
FILED
NOV 11 1976
MICHAEL RODAK, JR., CLE

No. 76-255

In the Supreme Court of the United States

OCTOBER TERM, 1976

HAZELWOOD SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

J. STANLEY POTTINGER,
Assistant Attorney General,

CYNTHIA L. ATTWOOD,
Attorney,
Department of Justice,
Washington, D.C. 20530.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1b-32b) is reported at 534 F. 2d 805. The opinion of the district court (Pet. App. 1a-26a) is reported at 392 F. Supp. 1276.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1c) was entered on April 20, 1976, and a timely petition for rehearing was denied on May 25, 1976 (Pet. App. 1d). The petition for a writ of certiorari was filed on August 20, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Title VII of the Civil Rights Act of 1964 is unconstitutional as applied to state and local governments.

2. Whether the court of appeals properly ruled that the statistical evidence presented, along with other evidence of discrimination, established a *prima facie* case of employment discrimination.

STATEMENT

The United States brought this suit on August 9, 1973, under Title VII of the Civil Rights Act of 1964, 78 Stat. 253 *et seq.*, as amended, 42 U.S.C. 2000e *et seq.*, and the Fourteenth Amendment to the Constitution, alleging racial discrimination in the employment practices of petitioners Hazelwood School District, the Superintendent of Schools, and members of the Hazelwood Board of Education. The complaint alleged that the School District, which borders on the St. Louis City School District, had engaged in a pattern or practice of racial discrimination in employment by its failure to hire black applicants who were as well or better qualified than the whites who were hired, by its recruiting practices and selection procedures, and by its perpetuation of the effects of past discrimination. The complaint sought an injunction to require the District to cease discriminatory practices, to take affirmative action to recruit black faculty and personnel, and to make offers of employment and back pay to black persons who were discriminatorily rejected (Pet. App. 1b-2b).

At trial, the United States presented evidence to show that the Hazelwood School District had a practice of discriminating in its hiring practices that originated prior to 1954, when Missouri public schools were segregated by law, and that the practice had not been discontinued. The United States also presented statistical evidence which showed that, while more than 15 percent of all teachers in St. Louis City and County are black, only two percent of the teachers employed by the Hazelwood School District are black (Pet. App. 18a). Evidence

was also introduced to prove that the School District's hiring procedures were standardless and that 55 rejected black applicants had apparently been discriminated against on account of their race (Pet. App. 5a-16a).

The district court held that the United States failed to prove that petitioners had engaged in racially discriminatory hiring practices (Pet. App. 23a, 25a). In support of this holding, the court found that no individual black applicant had been rejected on account of race and that the United States had failed to establish a *prima facie* case of discrimination on the basis of the statistical evidence presented. Although the evidence showed that no blacks were employed by the School District until 1969 and that less than two percent of the Hazelwood faculty was black at the time of trial while more than 15 percent of all elementary and secondary teachers in St. Louis City and County are black, the court ruled that the United States had not demonstrated a statistical disparity sufficient to constitute a *prima facie* showing of employment discrimination, because less than two percent of the children in the Hazelwood District schools are black (Pet. App. 18a-19a). The court denied all relief (Pet. App. 25a-26a).

The court of appeals reversed. It found that the evidence adduced at trial demonstrated (Pet. App. 8b; footnotes omitted):

> * * * (1) a history of discriminatory practices in the hiring of teachers by Hazelwood prior to the effective date of Title VII, (2) a statistical disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the labor market, (3) an unstructured decentralized hiring process in which subjective criteria predominate in evaluating candidates, and (4) specific discrimination against 16 black applicants for teaching positions at Hazelwood.

This evidence, the court determined, was sufficient to establish a *prima facie* case of racial discrimination —a showing that petitioners did not rebut.

With regard to the district court's analysis of the statistical evidence presented, the court of appeals stated that "[t]he level of black student enrollment in Hazelwood school[s] sheds no light whatsoever upon the dispute before us" (Pet. App. 11b). It therefore concluded that the district court erred in "absolving Hazelwood of unlawful employment practices on the basis of the paucity of black students in the Hazelwood schools" (*ibid.*).

The court of appeals also found clearly erroneous the district court's findings that 16 of the rejected black applicants were not rejected on account of their race (Pet. App. 15b-25b). In each instance, the court of appeals ruled that the United States had made out a *prima facie* case of employment discrimination that had not been rebutted by petitioners.

The court of appeals directed the district court permanently to enjoin petitioners from engaging in discriminatory hiring practices, require the School District to promulgate and publish job descriptions and hiring criteria, grant other specific injunctive relief, and require petitioners to place the names of the 16 discriminatorily rejected black applicants on a preferred hiring list and to give them the right to refuse first any vacancies to which their qualifications would entitle them (Pet. App. 26b-27b).

ARGUMENT

Petitioners contend there are two reasons warranting review by this Court. First, they argue (Pet. 7-13) that insofar as Title VII reaches racially discriminatory employment practices by a state or local government

that are "other than purposeful" (*id.* at 13), the statute exceeds congressional power under Section 5 of the Fourteenth Amendment. Second, they suggest (*id.* at 14-21) that the court of appeals erred in its consideration and analysis of the statistical data. Whatever the merits of these questions in the abstract, they are not presented by this case. The court of appeals concluded, as described below in greater detail, that the petitioner School District had engaged, *inter alia*, in purposeful, racially discriminatory recruitment practices, and found 16 instances (Pet. App. 15b-25b) in which the record established an unrebutted *prima facie* case of racial discrimination against black applicants for teaching positions. The court of appeals correctly applied well-established legal principles, and further review is not warranted.

1. Petitioners contend that the court of appeals found a violation of Title VII solely upon the basis of a statistical disparity between the percentage of blacks in the relevant labor market and the percentage of blacks employed by the District and that Title VII is therefore unconstitutional as applied. Relying on this Court's decision in *Washington* v. *Davis*, No. 74-1492, decided June 7, 1976, petitioners argue that, to the extent that Title VII allows a finding of discrimination in the absence of a showing of discriminatory purpose, the statute as applied to state and local governments is beyond the power granted to Congress under Section 5 of the Fourteenth Amendment.

The issue is not presented by this case. The decision of the court of appeals was not based solely upon evidence of a statistical disparity between the percentage of black teachers in the Hazelwood School District and the percentage of blacks in the relevant labor market. The court of appeals found that (Pet. App. 9b; footnote omitted):

> * * * prior to 1954, Hazelwood employed no black teachers in its all-white schools in accordance

> with the custom in the county; that from the time that Hazelwood's schools were integrated [until] 1969, it employed no black teachers; that Hazelwood placed newspaper advertisements for "white only" teachers in 1962; and that Hazelwood officials have never recruited from any predominantly black college, although they did recruit from predominantly white universities in Missouri and elsewhere.[1]

The court also found (Pet. App. 15b-25b) that petitioners had discriminated on account of race against 16 specified rejected black applicants. In so ruling, the court of appeals rejected, as clearly erroneous, the contrary findings of the district court. In addition, the court of appeals emphasized (Pet. App. 8b, n. 5) that it approached with caution the statistical evidence presented. The court concluded that the statistical evidence, "when considered in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria," and buttressed by the evidence of past discriminatory practices and present discriminatory rejection of qualified black applicants, established a *prima facie* violation of Title VII (Pet. App. 14b-15b).

---

[1]Petitioners argue that evidence of Hazelwood's discriminatory hiring practices before 1972 when state and local governments were first covered by Title VII is irrelevant to a determination that Hazelwood has violated Title VII (Pet. 20). Evidence of such discrimination is relevant, not only, as the court of appeals noted (Pet. App. 9b), because it may show that present policies or practices, although neutral on their face, perpetuate the effects of past discrimination, *United States* v. *Sheet Metal Workers, Local 36*, 416 F. 2d 123 (C.A. 8), but also because it may shed light on present deeds or policies that may violate Title VII. *Buckner* v. *Goodyear Tire and Rubber Company*, 339 F. Supp. 1108 (N.D. Ala.), affirmed, 476 F. 2d 1287 (C.A. 5); *Evans* v. *Local Union 2127, International Brotherhood of Electrical Workers, AFL-CIO*, 313 F. Supp. 1354 (N.D. Ga.).

Thus, contrary to petitioners' assertion (*e.g.*, Pet. 9-10), it is apparent from these findings that the court of appeals did not rest its decision upon statistical evidence alone. There is consequently no reason for the Court to consider in this case whether Title VII might be unconstitutional as applied in different circumstances.

2. Petitioners' contentions with regard to the use by the court of appeals of statistical evidence does not warrant review. Petitioners claim that the court of appeals' statistical analysis, which compared the percentage of black teachers in the Hazelwood School District (less than two percent in 1973-1974) to the percentage of black teachers in the area from which most of Hazelwood's teachers came when they were hired (more than 15 percent black in 1970) (Pet. App. 10b), is "plainly defective" (Pet. 16). As we noted above, the court of appeals specifically recognized (Pet. App. 8b, n. 5) that

> * * * caution is necessary when using statistical evidence to analyze such disparities in employment figures for professional and academic positions. The raw data often will obscure the actual number of persons in the general workforce, white and black, who possess the special qualifications needed for particular openings. Here the problem has been minimized by the use of data from surrounding school districts (where the average number of black teachers is as high as 15%), the size of the disparity (2% as compared to 15%), and the presence of other indicia of discrimination.

We believe that the court of appeals properly weighed the statistical evidence and, in light of the substantial disparity found, properly concluded that the statistical evidence, together with other evidence of discrimination, established a *prima facie* case that petitioners failed to rebut.

In any event, petitioners do not challenge the findings of the court of appeals that 16 of 55 identified rejected black applicants were discriminated against on account of race by the Hazelwood School District (Pet. App. 15b-25b). These findings alone, without the supporting statistical data, would be sufficient to support a conclusion that the Hazelwood School District had engaged in a pattern or practice of discrimination in hiring on account of race.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
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J. STANLEY POTTINGER,
Assistant Attorney General.

CYNTHIA L. ATTWOOD,
Attorney.

NOVEMBER 1976.

DOJ-1976-11

Supreme Court, U.S.
FILED
NOV 18 1976
MICHAEL RODAK, JR., CLERK

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Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

This case squarely presents the important question whether Title VII may constitutionally be applied to a state agency absent proof of purposeful discrimination. Respondent's assertion that "the court of appeals did not rest its decision upon statistical evidence alone" (Br. in Opp. 7) is irrelevant. The controlling, undisputed fact is that the court below conspicuously did not find any purposeful discrimination by the Hazelwood School District.

The court of appeals based its finding of a pattern or practice of discrimination here on statistics, not on evidence showing that 16 blacks were not hired to fill open positions at Hazelwood. (*See* Pet. 25b-26b.) Moreover, there is every indication that the evidence as to the 16 black applicants, standing alone, would not have led to such a finding. Respondent cites no authority for its contrary claim (Br. in Opp. 8) and, in fact, the court below considered evidence of individual cases of alleged discrimination separately, at the end of its opinion, and explicitly relegated its findings regarding these cases to the secondary status of evidence merely "buttressing" the controlling statistical showing. (Pet. 14b.) Indeed, there is no indication in the opinion below that the court would even have found discrimination in these 16 cases (among 41 that it reviewed) in the absence of its anterior, statistics-based finding of a pattern or practice of discrimination.

Whether it would have done so is a question that this Court need not answer. Should this Court hold with petitioners that the decision below is invalid for lack of a finding of purposeful discrimination and for reliance on statistics that distort rather that depict, then petitioners would be entitled (a) to relief from the burden of the general provisions of the remedial order directed by the court of appeals (Pet. 26b-28b) and (b) reconsideration by the courts below of the individual cases uninfluenced by the belief that they were pieces of a pattern of discrimination. In that reconsideration it will surely be relevant that the record shows that Hazelwood hired at least 16 blacks during the 1971-72 and 1972-73 school years — 23 percent of the total number of blacks who applied for teaching positions there, more than twice the rate at which Hazelwood hired overall.

This Court need not balance the conflicting evidence because, as pointed out above, the court of appeals here in fact made no finding of purposeful discrimination. It is

thus not petitioners, but respondent that seeks to have the Court act "in the abstract" (Br. in Opp. 5), by asking it to weigh the sufficiency of evidence to support a hypothetical judgment that was never reached below. If proof of discriminatory purpose is required to establish violation of Title VII by a state agency, the court of appeals applied an erroneous legal standard in this case. This, and not any need to review the sufficiency of evidence, is why the petition for a writ of certiorari should be granted here.

Respectfully submitted,

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February 1977

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In The

Supreme Court of the United States

October Term, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT; C. O. McDONALD, Superintendent; ROBERT BISCHOF, ROBERT COLEMAN, DOROTHY SMITH, CHARLES SWEENEY, DONALD MATTOX and MILTON STRAUSS, Members of the Board of Education of the Hazelwood School District,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Missouri, which is reported at 392 F. Supp. 1276, appears at Appendix A of the Petition, pp. 1a-26a. The opinion of the United States Court of Appeals for the Eighth Circuit, which is reported at 534 F.2d 805, is reprinted at Appendix B of the Petition, pp. 1b-32b.

JURISDICTION

The judgment of the court of appeals, reversing a judgment of the district court in petitioners' favor, was en-

tered on April 20, 1976, and on May 25, 1976, the court of appeals denied a timely petition for rehearing and suggestions for rehearing en banc. (Pet. Apps. C, D.) A petition for a writ of certiorari was filed on August 20, 1976, and was granted on January 10, 1977. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "SECTION 1. . . . [N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.
>
> * * *
>
> "SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Section 701 of the Civil Rights Act of 1964, 78 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. § 2000e, provides in pertinent part:

"For the purposes of this title—

> (a) The term 'person' includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.
>
> (b) The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year . . . ."

Section 703(a)(1) of the Civil Rights Act of 1964, 78 Stat. 255, 42 U.S.C. § 2000e-2, provides:

"(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; . . ."

Section 707(a) of the Civil Rights Act of 1964, 78 Stat. 261, 42 U.S.C. § 2000e-6(a), provides:

"(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described."

QUESTIONS PRESENTED

1. Whether Congress has authority under Section 5 of the Fourteenth Amendment to prohibit by Title VII of the Civil Rights Act of 1964 employment practices of an agency of a state government in the absence of proof that the agency purposefully discriminated against applicants on the basis of race.

2. Whether a court may disregard evidence that an employer has treated actual job applicants in a nondiscriminatory manner and rely on undifferentiated workforce statistics to find an unrebutted prima facie case of employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

STATEMENT

The Hazelwood School District lies in the northernmost tip of St. Louis County, Missouri. It was organized between 1949 and 1951 from more than a dozen school districts, none of which provided instruction beyond the eighth grade. At that time the area of 78 square miles that was brought within the single Hazelwood District was farming country. Hazelwood operated just eight schools at the beginning, with 811 students. There were 27 faculty members. None of the students and none of the teachers was black. (Pet. App. A 2a-3a.)[1]

Since 1951, the area served by the Hazelwood School District has become a populous outlying suburb of St. Louis. School enrollment and faculty size have grown enormously. By 1970 Hazelwood operated a system of schools through high school, and in 1973-74, the last year for which there are data of record, more than 25,000 students were enrolled, about 500 of them black, and there were about 1,200 teachers and other academic professionals, 22 of them black. (Pet. App. A 3a; Pl. Ex. 55.)

This case concerns the hiring of black professionals by Hazelwood. A complaint was filed by the Attorney General

[1]Most facts are uncontested at this point, and citations for factual propositions are principally to the opinions of the district court (Pet. App. A__) and the court of appeals (Pet. App. B__), which are reproduced in the appendices to the petition for certiorari. Other citations are to the appendix in this Court (App. ____), the joint appendix below (R. __), the transcript of the trial (Tr. __) and exhibits (Pl. Ex. __).

in the name of the United States asserting violations by Hazelwood in such hiring of Title VII of the Civil Rights Act of 1964 and the equal protection clause of the Fourteenth Amendment. (App. 2-6.) Section 703(a)(1) of the Civil Rights Act of 1964 (p. 3, *supra*) makes it an unlawful employment practice for an "employer" — redefined in 1972 to include "governments, governmental agencies, [and] political subdivisions" (p. 2, *supra*) — to fail or refuse to hire any individual because of his race, color, religion, sex or national origin. Section 707(a) of the Act (p. 3, *supra*) empowers the Attorney General to bring suits against any person that he has "reasonable cause to believe . . . is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by" Title VII and when he has reasonable cause to believe that "the pattern or practice is of such a nature and is intended to deny the full exercise of the rights" described in Title VII.

Although Title VII was made applicable to state and local governmental bodies only in 1972, the record made on the Government's complaint covers a longer period. It showed:

In the early and middle 1960's, there were more open teaching jobs than applicants as enrollment in such school districts as Hazelwood grew rapidly. Then a dramatic turnaround in the nationwide market for teachers occurred as school enrollment growth slowed, and in recent years there have been more applicants for teachers' jobs than jobs. When the sellers' market prevailed, Hazelwood engaged in quite extensive recruiting of teachers. (Pet. App. A 3a-4a; App. 54.)

More recently Hazelwood has been able to get along with a minimum of recruiting. Without trying, it has several qualified applicants for every open teaching position. In the 1971-72 school year there were 3,127 applicants for 234 open faculty positions. In 1972-73 there were 2,373 applications for 282 teaching vacancies. (Pet. App. A 4a; Tr. 385.)

To make the choices that this abundance of job applicants requires, Hazelwood depends primarily on the principals of its elementary schools and the principals and department heads of its secondary schools. A central office receives, catalogues and indexes completed applications and makes applicants available for interviews when job openings occur. The interviews are conducted by principals in elementary schools and by department heads and sometimes the principals in junior and senior high schools. (Pet. App. A 4a-5a; App. 15-16, 20-21, 24-25, 28-31, 38-41, 63-65, 67-68.)

Recommendations made or endorsed by the principals on the basis of the interviews are routinely honored in hiring decisions that are made formally by the superintendent of schools and ratified by the Board of Education. (App. 10-11, 24-25, 39, 46-47.) Hazelwood's policy is to hire as teachers "the best possible certified persons within the financial ability of the district without consideration as to age, sex, race, national origin, political or religious beliefs." (App. 11.) All of the school officials whose testimony is of record here emphasized that their sole aim is to obtain the most competent teachers they can. (App. 18, 21, 25, 48, 60, 65.) Hazelwood has no other formal standards. Advanced degrees do not count for much, if anything. (App. 22, 27, 51.) Nor does mere length of experience. (*Id.*) There are standardized evaluation sheets for use by elementary and secondary school interviewers, but the criteria are general. (App. 16-17, 317-18.) There is no effort to quantify what cannot be quantified or to pretend to apply objective measurements of likely success in the classroom that experience indicates do not exist. The principals, coordinators and superintendents who testified agreed on the importance of certain factors: a prospective teacher's attitude toward his or her work and toward children; the applicant's knowledge of the subject matter to be taught, especially in secondary schools, his or her quality of expression, manner around children and personal appearance. (App. 22, 26, 48-51, 68-69.) To make possible informed judgments as to what applicant will best serve the educational needs of Hazelwood's students, applicant interviews may last as long as an hour or an hour and a half. (See generally Pet. App. A 4a-6a; App. 26.)

Before 1954 public schools throughout Missouri were segregated by command of State law. (Pet. App. A 17a.) Furthermore, only white teachers were allowed to teach in schools with white students and only black teachers in schools with black students. There was never any occasion to enforce racial segregation in the schools of the Hazelwood District (or, so far as appears, its predecessors) because there were no black residents in the area.[2]

When the first black student actually enrolled in a Hazelwood school does not appear from the record. In the 1967-68 school year there were 59 black students. (Pl. Ex. 55.) The first black teacher was hired by Hazelwood for the 1969-70 school year. (Pet. App. A 3a; Pl. Ex. 70.) Offers were made to black applicants for teachers' jobs before that. (App. 52.)

In recent years black teachers have been hired in increasing numbers. Indeed, black applicants for teaching jobs as a group apparently have fared better in the Hazelwood hiring process than white applicants. The number of black professionals in the system has grown from six in 1970-71 and seven in 1971-72 to 16 in 1972-73 to 22 in

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[2]Late in 1954, after this Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954), the superintendent of schools reported to the Board of Education that a black family that might have school-age children had moved into the District. The Board instructed that any black resident children be admitted into the appropriate school but suggested that the superintendent offer to pay tuition at a school in some other district in view of the otherwise complete absence of blacks from the Hazelwood schools. (Pet. App. A 2a; App. 428.)

1973-74.[3] The Government identified on the record 52 unsuccessful black applicants for teaching positions, principally concentrated in the 1972-73 and 1973-74 school years.[4] If there were a total of 52 unsuccessful black applicants for those two years, then since 15 other black applicants were hired for those two years, the hire rate for black applicants was 22 percent. On the other hand, for the 1971-72 and 1972-73 school years, Hazelwood, as indicated above, had a total of 5,500 applicants for 516 open positions. The overall hire rate in these two years, then, was less than 10 percent, half the rate for black applicants. Even if the Government failed to identify as many as half the unsuccessful black applicants on the record, the black rate of teacher hire exceeded the apparent general rate of teacher hire in the period.

The record contains census figures indicating that 15 percent of all teachers in St. Louis City and County combined in the census year of 1970 were black (App. 408-11), while the 22 black Hazelwood faculty members in the 1973-74 school year were slightly less than 2 percent of the total Hazelwood faculty of about 1,200 (Pl. Ex. 55).[5] The Gov-

[3]See Pet. App. A 3a. The record source for most of the figures stated by the district court is Pl. Ex. 55, a reproduction of reports by Hazelwood to federal authorities. Hazelwood was required to report on the composition of its faculty only biannually, for the years 1970-71 and 1972-73, for example, until 1973; the figure of seven black faculty members for 1971-72 is not of record but is taken from Hazelwood's internal records.

[4]At trial, the Government produced Pl. Ex. 49, which listed 61 persons asserted to have been unsuccessful black applicants. Seven names were deleted prior to the exhibit's introduction into evidence. Other evidence showed that of the remaining 54 persons, one was in fact hired by Hazelwood and another was offered a job but declined it. For reasons that are not entirely clear, both the district court and the court of appeals referred repeatedly to the number of unsuccessful applicants as 55.

[5]The record contains several different figures for Hazelwood's faculty size. For the 1973-74 school year, the District's total full-time (continued)

ernment relied heavily on the contrast between the 15 percent black teacher figure for the area that it took as the relevant market for Hazelwood's teacher recruitment and Hazelwood's own 2 percent black faculty figure.

The district court found the comparison irrelevant because the 15 percent figure "is distorted by the inclusion of data from the St. Louis City district, which contains a much higher ratio of black teachers . . . ." (Pet. App. A 19a.) Indeed, the St. Louis school district, which employs over one fourth of the teachers in the combined City-County area, consciously and deliberately attempts to maintain a faculty that is 50 percent black. (App. 94-95.) This fixed 50 percent quota is not based on the availability of black applicants for teaching vacancies or on the percentage of actual applicants for teaching positions there who are black. (*Id.*)

The district court noted the figures mentioned above indicating the growth in the number of black faculty members at Hazelwood and the relative success of blacks as job applicants. (Pet. App. A 19a, 25a.) Having found no overall pattern of discrimination, the district court saw nothing discriminatory in Hazelwood's failure to hire the unsuccessful black applicants identified by the Government at trial. (*Id.* at 25a.) It rendered judgment for the defendants, the Hazelwood District, the superintendent of schools and members of the Board of Education.

[5](continued)
professional staff, including the superintendent's staff, principals, teachers, counselors, librarians, and others, numbered 1,321. (Pl. Ex. 55.) Of that group, there were 1,188 classroom teachers, counselors and librarians. In 1972-73, the District's professional staff—apparently excluding personnel not assigned to a single school—numbered 1,230, and there were 1,107 classroom teachers. (*Id.*) The district court placed the size of the "full-time professional faculty" in 1973-74 at 1,231 (Pet. App. A 3a), which may have been a transposition of digits in the 1,321 figure stated above. The district court's 1,231 figure was unquestioned and was adopted by the court of appeals (Pet. App. B 4b).

The judgment was reversed on appeal by a divided panel of the court of appeals. (Pet. App. B 1b-32b.) The majority of the court ignored the statistics indicating that Hazelwood had been hiring black applicants at twice the rate at which it was hiring whites and accepted as controlling the Government's comparison of the 15 percent census figure for the combined City and County with Hazelwood's 2 percent figure.

> "The law is well-settled that the relevant consideration in an employment discrimination case is the statistical disparity between the proportion of blacks in the employer's workforce and the proportion of blacks in the labor market." (Pet. App. B 11b.)

The court held that the disparity between 15 percent and 2 percent established a "*prima facie* case of a pattern or practice of employment discrimination in violation of Title VII" (*id.* at 14b), which Hazelwood had not rebutted. The court said that the statistical evidence should be considered in the light of Hazelwood's "hiring procedures" described above (*id.*), which it elsewhere said "may be the crux of the problem," apparently because Hazelwood had not attempted to establish some kind of objective standards for its hiring decisions (*id.* at 4b).

The court of appeals also said that the statistical showing was buttressed by "evidence of actual discriminatory practices in the hiring of teachers during the period prior to the effective date of Title VII . . . ." (*Id.* at 14b.) These "practices" were (1) a newspaper advertisement for teachers that appeared in 1962 in a Jackson, Mississippi, newspaper with a restrictive "white only" phrase that may or may not have been in the School District's copy as submitted (App. 56-57, 70, 76)—the same advertisement appeared elsewhere without the restrictive phrase (App. 73, 74), and the man who was superintendent of schools at the time testified that he would not have included the phrase in any advertising material sent out of his office because it was contrary to the

District's policy (App. 56-57); (2) the failure, in the years when Hazelwood was actively recruiting, to pursue recruitment efforts at colleges with predominantly black student bodies, beyond one visit to such a college, where, not surprisingly, there was little interest in all-white Hazelwood among black students who foresaw a sellers' market for their services (Pet. App. A 3a-4a; B 9b n.6); and (3) the possible use until the early 1960's of application forms with racial identifications on them, which would have had to be used to satisfy Missouri law before 1954 (Pet. App. A 4a; R. 46-47, 55-56).

The court, finally, found that in 16 of the 52 individual black applicants' cases presented by the Government there was a prima facie case of discrimination and that these individual cases buttressed its finding of a pattern or practice of discrimination. (Pet. App. B 14b, 17b-25b.)

The court of appeals reversed the judgment of the district court and remanded, ordering wide-ranging specific injunctive relief. (*Id.* at 26b-28b).[6] Although in opening his case in the district court, counsel for the Government had said that his evidence would show that what he described as the lack of black professional employees in Hazelwood "does not result from chance but is the result of purpose" (Tr. 8), the court made no finding of any discriminatory purpose motivating Hazelwood's em-

[6]The court of appeals ordered that the injunctive relief against Hazelwood include (1) a permanent injunction against further discrimination, (2) promulgation of job descriptions and hiring criteria, (3) inclusion in recruiting and application materials of requirements for teaching positions and procedures by which selections are made, (4) equal notice of available openings to all applicants, (5) visits to predominantly black colleges and other institutions in any recruiting, (6) assurance of student-teaching opportunities for black college students, (7) periodic reports to the Justice Department for three school years, (8) maintenance for three years of a record explaining selection of any white applicant over an available black, (9) offer to 16 previously unsuccessful black applicants of first available teaching positions for which they are qualified, and (10) back pay. (Pet. App. B 26b-28b.)

ployment practices, and it did not find a violation of the Fourteenth Amendment.

The decisions of this Court in *National League of Cities* v. *Usery*, 96 S.Ct. 2465 (1976), and *Washington* v. *Davis*, 426 U.S. 229 (1976), were rendered after the judgment below. The court below did not consider whether the mere statistical showing of disparate treatment of blacks that it perceived, buttressed as it thought the Government's case here had been by the evidence of Hazelwood's history, its decentralized hiring procedures, and the cases of the 16 blacks not offered jobs, could properly be the premise of a judgment against a political subdivision of a sovereign state and the imposition of sanctions on it. The court did not consider whether, instead, a finding of purposeful discrimination on evidence that would support such a finding, such as would be required in a case arising solely under the Fourteenth Amendment, was also necessary here if sanctions were to be imposed on a local governmental body.

SUMMARY OF ARGUMENT

I

Title VII of the Civil Rights Act of 1964 as applied to state and local governmental bodies cannot be sustained as an exercise of Congress' commerce power, whatever may have been the view when the amendment making it applicable to state and local governments was enacted. In *National League of Cities* v. *Usery*, 96 S. Ct. 2465 (1976), the Court held that the Fair Labor Standards Act could not constitutionally be applied to prescribe the minimum pay and maximum working hours of state and local governmental employees, in that case policemen and firemen. In doing so, it overruled *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), which had sustained the statute in its application to employees of state schools and hospitals. If Congress cannot prescribe the wages and hours of public employees, including school employees, it cannot prescribe how public school districts must go about hiring and promoting their employees.

Congress also invoked Section 5 of the Fourteenth Amendment in making Title VII applicable to state and local governments. In some circumstances, and in any case if so read as to be no more than commensurate with the equal protection clause of the Fourteenth Amendment, Title VII so applied is undoubtedly appropriate legislation to enforce the equal protection clause of the Fourteenth Amendment and therefore authorized by Section 5. But a state or local statute, regulation or other governmental action denies the equal protection of the laws in violation of the Fourteenth Amendment only if it is purposefully discriminatory. It is not enough that it has effects that differ for different groups, even different racial groups. *Washington* v. *Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 97 S. Ct. 555 (1977).

Here Title VII was interpreted and applied to prohibit hiring practices that the court below found to produce racially disparate results, principally on the basis of a statistical comparison of the proportion of black teachers on the Hazelwood School District faculty and the proportion of black teachers in what the court took to be Hazelwood's labor market. The court did not find that Hazelwood had purposefully discriminated against black applicants for teaching positions, and it could not have so found on the record.

Neither this Court's decision in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), nor any other decision of the Court holds that Section 5 gives Congress the authority to proscribe state action that under this Court's precedents does not work a denial of the equal protection of the laws, in the absence of considerations not present here such as a necessity to remedy past constitutional violations. *Compare*

Oregon v. *Mitchell*, 400 U.S. 112 (1970). The *Morgan* decision, sustaining a sharply-focused invalidation of a particular action of a single state that was reasonably taken to work a denial of equal protection, does not support the present application of Title VII, which has been used by the court below as a basis for imposing severe injunctive, preferential hire and backpay sanctions on Hazelwood for unintended racially disparate consequences of employment practices that are racially neutral on their face. A public employer whose employment practices produce such unintended consequences has been held by this Court not to deny the equal protection of the laws, and in amending Title VII Congress made no contrary judgment. Moreover, there is no element here of remedy for past unconstitutional discrimination, and the sanctions imposed by the court would force the Hazelwood School District to make racially-motivated hiring decisions that could themselves be asserted to deny non-black teacher job applicants the equal protection of the laws.

II

Even if it were the law that a showing of unintended racially disparate consequences of hiring practices could suffice to make out a violation of Title VII, there has been no such showing here. The court below relied principally on fatally flawed statistical proof in finding a prima facie violation of Title VII. The proof was that, according to the 1970 census, 15 percent of all the teachers in St. Louis City and County combined are black whereas in the most recent year for which data are of record less than 2 percent of Hazelwood's faculty was black. But comparisons of the composition of an employer's workforce and the composition of his labor market are appropriate only in circumstances that did not obtain here—notably circumstances in which it is impossible to measure directly

how the employer has dealt with black job applicants. The direct evidence is the best evidence when it is available. In this case there is evidence of Hazelwood's treatment of black job applicants. The evidence is that apparently they fared somewhat better as a group than white applicants. There is no indication, moreover, that black prospects were discouraged from applying or that there was any other impediment to a full voluntary representation of blacks among job applicants. Furthermore, the workforce-labor market comparison used by the court of appeals as the basis of its decision is itself flawed by (1) the fact that the St. Louis labor market is dominated by the schools of the City of St. Louis, which attempt to maintain a faculty that is 50 percent black, succeed or nearly succeed in doing so and thereby distort the labor market figures and preempt the available black teachers, and (2) the fact that the comparison is with Hazelwood's entire workforce, largely the result of hiring before Title VII applied to it, and not with its new black teacher hires, which only recently have been made in significant numbers.

III

The decision below cannot be sustained independently of the flawed statistical proof. The court found fault with Hazelwood's decentralized hiring procedures because of an asserted lack of objective standards for hiring decisions, and it found that in 16 cases (of 52 presented by the Government) unsuccessful black applicants for teaching jobs had shown a prima facie case under Title VII because others no better qualified had been hired for jobs for which they were not hired. Analysis of these cases shows that there was no discrimination and that Hazelwood's hiring procedures, fair on their face, were administered fairly.

ARGUMENT

The court of appeals did not find that Hazelwood had purposely discriminated against black applicants for teaching positions. It could not have so found on the record. The court did not hold that Hazelwood's past or current hiring procedures denied to black applicants the equal protection of the laws, in violation of the Fourteenth Amendment, to which as a public body Hazelwood has always been subject. The Court rather found a "disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the relevant labor market" (Pet. App. B 14b) and, principally on the basis of this finding, concluded that a prima facie case was established under Title VII of the Civil Rights Act of 1964, to which Hazelwood was subject beginning only with its teacher hiring for the 1972-73 school year.[7] It also found separately that a prima facie case of employment discrimination was made as to 16 black applicants for teaching jobs on a showing that they were qualified for jobs that were not offered to them and that the jobs went to white applicants no better qualified.

The court said that the prima facie case had not been rebutted, and it therefore concluded that Hazelwood had violated Section 703(a)(1) of the Act. (P. 3, *supra.*) It granted broad injunctive, preferential hiring and backpay relief upon the Government's request under Section 707 (p. 3, *supra*), on the theory that Hazelwood was responsible for a pattern or practice of denial of equal employment opportunity rights.

The court thus applied Title VII of the Civil Rights Act to a political subdivision of a sovereign state exercising "perhaps the most important function of state and local governments," *Brown* v. *Board of Education*, 347 U.S. 483,

[7]Title VII first applied to Hazelwood on March 24, 1972, when the Equal Employment Opportunity Act of 1972, amending the definition of employers covered by Title VII of the Civil Rights Act of 1964 (p. 2, *supra*), was approved. 86 Stat. 113.

493 (1954), on the basis of a finding of what must be taken as unintended racially disparate results of hiring procedures. If the court properly construed Title VII and correctly applied the Act to Hazelwood, this case directly presents the question whether Title VII is constitutional as so construed and applied. The issue ultimately posed is whether Congress has authority under Section 5 of the Fourteenth Amendment to prohibit by Title VII employment practices of a state agency in the absence of proof that the practices were racially motivated. That issue was noted but expressly not decided in *Fitzpatrick v. Bitzer*, 96 S. Ct. 2666, 2671 n.11 (1976). We submit, for the reasons set forth in Part I below, that if this issue is now confronted, the Court must find the application of Title VII to the public school district in this case unconstitutional.

In Part II of the Argument we urge that, even taken on its own terms, *i.e.*, on the assumption that sanctions can be imposed on a public body for the unintended, racially-imbalanced effects of its employment practices, the decision below is wrong because the statistics on which the court relied did not indicate, much less prove, that black applicants as a group were treated any differently from white applicants as a group. When the main statistical prop of the court's decision is removed, the decision falls because at most the other evidence was regarded by the court itself as buttressing the statistical showing or as something in the light of which the statistical showing should be considered. We address ourselves in Part III to the inadequacy of other evidence, particularly evidence as to 16 asserted individual cases of discrimination against black job applicants, as independent grounds of decision.

I. TITLE VII CANNOT CONSTITUTIONALLY PROHIBIT EMPLOYMENT PRACTICES BY AN AGENCY OF A STATE GOVERNMENT IN THE ABSENCE OF PROOF OF PURPOSEFUL DISCRIMINATION, AND THERE WAS NO SUCH PROOF HERE.

The court of appeals found a prima facie violation of Title VII by Hazelwood on the basis of statistical evidence that the percentage of black teachers on the Hazelwood faculty was smaller than the percentage of black teachers employed in all the school districts of St. Louis City and St. Louis County combined. For all practical purposes the court of appeals then converted this prima facie case into irrebuttable proof by finding that Hazelwood's hiring standards are "subjective" and, for that reason alone, that no explanation based on how those standards were applied could rebut the inference of discrimination — indeed that such an attempted explanation would corroborate rather than rebut the charge. (Pet. App. B 14b.) The court of appeals thus held that no more than a showing of racial disparity in workforce statistics is required to prove a violation of Title VII by an employer that, like Hazelwood, inevitably relies to some degree on "subjective" hiring standards. There is no need on this view of Title VII to show any purposeful discrimination.

There are two possible sources of congressional power to enact such a provision of law — the Commerce Clause and Section 5 of the Fourteenth Amendment — both of which were invoked by Congress when, as part of the Equal Employment Opportunity Act of 1972, it extended Title VII to state and local governments. *See* H.R. Rep. No. 92-238, 92d Cong., 1st. Sess. 19 (1971); S. Rep. No. 92-415, 92d Cong., 1st Sess. 11 (1971); 118 Cong. Rec. 1816, 1839-40 (1972) (remarks of Senators Williams and Javits). The Commerce Clause is not authority for Title VII in its application to state and local governments, however Title VII is construed, and Section 5 of the Fourteenth Amendment is not

authority for the Title VII that the court of appeals has applied to a local governmental body in this case.

A. The Commerce Clause Does Not Authorize Congress To Interfere with the Hiring Practices of a State Agency.

Congress was of the view in considering the bills that became the Equal Employment Opportunity Act of 1972, 86 Stat. 103, that the extension of the employment title of the Civil Rights Act of 1964 to state and local governments could be justified, at least in part, under the Commerce Clause. That view rested on this Court's opinion in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), which had upheld application of federal wage and hour rules to state hospitals and schools. *See* S. Rep. No. 92-415, 92d Cong., 1st Sess. 11 (1971); 118 Cong. Rec. 1816, 1839 (1972) (remarks of Senators Williams and Javits).

However correct that view may have been in 1971, it was repudiated last term when the Court decided *National League of Cities* v. *Usery*, 96 S. Ct. 2465 (1976). There the Court held that application of the Fair Labor Standards Act to states, cities and counties would violate controlling principles of constitutional federalism by imposing substantial additional financial costs on those sovereign entities, thereby "directly displac[ing] the States' freedom to structure integral operations in the areas of traditional governmental functions." *Id.* at 2474.

The Court's decision was not based on any distinction between the state and local agencies that were before it in *National League of Cities*—police and fire departments—and the schools and hospitals that had been involved in *Maryland* v. *Wirtz*.

> "While there are obvious differences between the schools and hospitals involved in *Wirtz*, and the fire and police departments affected here, each provides an integral portion of those governmental services

which the States and their political subdivisions have traditionally afforded their citizens. We are therefore persuaded that *Wirtz* must be overruled." *Id.* at 2476 (footnote omitted).

In overruling rather than distinguishing *Maryland* v. *Wirtz*, the Court confirmed the view of the importance of public education as a governmental function that it has frequently expressed. We have quoted above from *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954) (p. 16, *supra*). In *Milliken* v. *Bradley*, 418 U.S. 717, 741-42 (1974), the Court just recently stressed the need for effective local control over this vital activity.

> "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. See *Wright* v. *Council of the City of Emporia*, 407 U.S., at 469. Thus, in *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 50 (1973), we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence.' "

Compare Goss v. *Lopez*, 419 U.S. 565, 576 (1975); *Tinker* v. *Des Moines School District*, 393 U.S. 503, 507 (1969); *Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968).

If schools cannot properly be distinguished from police and fire departments in measuring the scope of Congress' Commerce Clause power, neither can the prescription of hiring practices for state bodies be distinguished from the prescription of minimum wages and maximum hours for state employees.

At the risk of overarguing what seems an indubitable point, we submit that, while the application of Title VII to state agencies does not directly impose on them increased costs like those that the court discussed in *National League of Cities*, the Court did not base its decision there on the mere fact that the Fair Labor Standards Act would increase the labor expenses of state and local governments. Rather, it based its decision on the interference with the governmental operations that would result from increased labor costs. Application of Title VII would result in comparably unjustified interference with Hazelwood's operations.

There is, to begin with, the obvious direct burden—psychological as well as physical—of the requirement that Hazelwood create extensive records and make special periodic reports to the federal government not required of other school districts. The more important direct interference, however, is the requirement that Hazelwood offer teaching positions to 16 named black applicants—14 of whom have never been interviewed by Hazelwood and the other two of whom were interviewed and rejected by Hazelwood as inferior to other candidates. (Pp. 66-73, *infra*.) A more fundamental displacement of Hazelwood's "freedom to structure [its] integral operations," *National League of Cities* v. *Usery*, *supra* at 2474, is difficult to imagine.

Potentially even more of an interference is the enforced adoption of artificially objective hiring standards. Whatever may be said about the desirability of objective standards in the hiring of non-professionals, it makes no sense to judge an applicant for a position as a teacher by any set of defined objective standards. A principal interviewing candidates to teach an elementary school class cannot just look to see who has a certificate indicating minimal qualification to teach elementary subjects, or even whose paper academic and experience credentials look best. Rather, the principal must determine who, among those with certificates, will work most successfully with his or her students, who will set the best example for the students to follow. These judgments

necessarily require assessment by the principal of what the court of appeals termed "subjective" matters: philosophy of education, ability to develop and sustain personal relationships with young people, knowledge of subject matter and capacity to communicate that knowledge, ability to inspire students, personality, poise, self control, attitude, appearance, and spirit of mutual respect. Judgments on these matters may or may not correspond with an "objective" assessment of paper credentials.

In view of the inherently subjective nature of the process of hiring teachers, the impact of the court of appeals' view of Title VII is devastating. It means that a prima facie case of statistical discrimination cannot be rebutted and thus, that if a school district faculty includes fewer members of a group protected by Title VII than a defined area "standard," the district has two alternatives: (1) immediately to engage in racially-, religiously- or sex-oriented hiring to bring its average workforce statistics up to the defined area standard, with the disregard for qualifications that must accompany such a process, or (2) remain subject to suit under Title VII on the same grounds relied upon by the court of appeals in finding a violation by Hazelwood. This choice, of course, is no choice at all, and a district in this situation would, as a practical matter, have little alternative but to hire the necessary number of black, Spanish-surnamed, Catholic or male teachers regardless of its assessment of their relative competence. Thus Congress in effect will have replaced the broadly gauged qualification standards according to which the school district would select teachers with a new standard almost exclusively geared to the requirements of Title VII. This is a grave interference with the district's freedom to structure its own operations. Under *National League of Cities* Congress derives no power from the Commerce Clause so to burden an instrumentality of state sovereignty.

B. Section 5 of the Fourteenth Amendment Does Not Empower Congress To Prohibit Employment Practices by a State Agency in the Absence of Proof of Purposeful Discrimination, and There Was No Such Proof Here.

Congress did of course intend Title VII to interfere with the employment practices of state agencies, in laudable pursuit of Congress' responsibility to enforce under Section 5 the prohibition of discrimination contained in the equal protection clause of the Fourteenth Amendment. *See* H.R. Rep. No. 92-238, 92d Cong., 1st Sess. 19 (1971); S. Rep. No. 92-415, 92d Cong., 1st Sess. 11 (1971); 118 Cong. Rec. 1840 (1972) (remarks of Senator Javits). Section 5 empowers Congress "to enforce, by appropriate legislation," the substantive provisions of that amendment, including the equal protection clause. In *Katzenbach* v. *Morgan*, 384 U.S. 641, 650 (1966), the Court compared the reach of congressional power under Section 5 to the scope of the necessary and proper clause, Art. I, § 8, cl. 18, and quoted Chief Justice Marshall's often repeated formulation of the latter in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819). The Court in *Morgan* also repeated from *Ex parte Virginia*, 100 U.S. 339, 345-46 (1879), the following articulation of the scope of Section 5:

> "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power." 384 U.S. at 650.

However sweeping the language used to describe the scope of congressional power under Section 5, the question

whether a statute is "appropriate" to enforce a substantive provision of the Fourteenth Amendment—in this case, the prohibition of racial discrimination contained in the equal protection clause—can be determined only by assessment of what state action the statute by its own specific terms prohibits or commands and what the general terms of the equal protection clause allow to be commanded or prohibited in their name. Because enforcing legislation under Section 5 directly impinges upon activities of the sovereign states, this assessment must be made in the light of the principles of federalism that are at the heart of our constitutional system.

Title VII need be read to sweep no wider than the equal protection clause itself (pp. 38-41, *infra*) and on that reading would pose no substantial issue regarding the scope of Section 5. However, as interpreted by the court of appeals, Title VII goes far beyond enforcement of the equal protection clause; broadly sweeping away state sovereignty, it may well require state agencies to violate the very principle of nondiscrimination that is the genius of the equal protection clause.

1. Proof Of Purposeful Discrimination Is Required To Establish A Violation Of The Equal Protection Clause, And There Was No Such Proof Here.

a. Purposeful discrimination is essential to a finding that a state or state subdivision has denied to some within its jurisdiction the equal protection of the laws.

The equal protection clause protects against intentional discrimination; it does not prohibit conduct simply because it has a disproportionate racial impact. Any doubts as to that proposition of law were stilled by this Court's decision in *Washington* v. *Davis*, 426 U.S. 229 (1976). The proposition has very recently been confirmed in *Village of Arlington Heights* v. *Metropolitan Housing Development*

Corp., 97 S. Ct. 555 (1977). It seemingly commands the assent of all members of the Court.

Like this case, *Washington* v. *Davis* involved allegations of discriminatory hiring practices. Unsuccessful applicants for positions in a training program for the District of Columbia police department asked to have invalidated on constitutional grounds a requirement that they pass a standard test of verbal, reading and comprehension skills. The challenge was based solely on evidence showing that the test disqualified as a disproportionate number of black applicants; plaintiffs did not charge that the use of the test was racially motivated, or that the District had in the past purposefully discriminated against them, or any other blacks, in hiring for the police department.

Because the District is not a state, the constitutional challenge was based on the due process clause of the Fifth Amendment, which as the Court said "contains an equal protection component prohibiting the United States from invidiously discriminating between individuals or groups." 426 U.S. at 239. Thus, cases arising under the equal protection clause of the Fourteenth Amendment were pertinent. Those cases, the Court said, "have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional *solely* because it has a racially disproportionate impact." *Id.* The Court traced the relevant cases, candidly finding in some of them "indications to the contrary" of the proposition it was laying down. *Id.* at 242. The Court recognized that some lower court cases had built upon these indications by finding constitutional violations in mere disparate impacts in areas including public employment and housing. "[T]o to the extent that those cases rested on or expressed the view that proof of discriminatory racial purpose is unnecessary in making out an equal protection violation," the Court disapproved them. *Id.* at 245 & n. 12.

In *Arlington Heights* the court restated that "[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." 97 S. Ct. at 563. It went on to suggest how such a showing can be made: it can start with impact — whether the official action in question " 'bears more heavily on one race than another,' " but except in such rare and classic instances as the blatant enforcement solely against Chinese of a municipal ordinance that invited arbitrariness in *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886), "impact alone is not determinative . . . ." 97 S. Ct. at 564. Another factor that may be significant is historical background, "particularly if it reveals a series of official actions taken for invidious purposes;" and the "specific sequence of events leading up to the challenged decision," and the "legislative or administrative history may be highly relevant . . . ." *Id.* at 564-65.

As the discussion in the *Arlington Heights* case indicates, the question we are concerned with here arises most frequently where state action is alleged to be discriminatory "even when the governing legislation appears neutral on its face." *Id.* at 564. A generation ago, the Court anticipated *Washington* v. *Davis* and *Arlington Heights* in a non-racial context, when, speaking through Chief Justice Stone, it said that "[t]he unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination." *Snowden* v. *Hughes*, 321 U.S. 1, 8 (1944).

b. There are no findings of purposeful discrimination here and no evidence on which such findings could be made.

Here, as in *Arlington Heights*, there is "governing legislation [that] appears neutral on its face," or, as in *Snowden* v. *Hughes*, a "statute fair on its face." The

District's hiring policy, laid down by its governing board, is unequivocal: to hire "the best possible certified persons within the financial ability of the district without considera-ation as to age, sex, race, national origin, political or religious beliefs." (P. 6, *supra*.) The court of appeals did not find that any school official or group of school officials had purposely or intentionally violated this policy by making race a consideration in the hiring of teachers. The failure to make such a finding was not a mere omission brought about by a belief that Title VII required no more than the finding of discriminatory effect that the court did make. The Government alleged a violation of the equal protection clause as well as of Title VII. (App. 4.) As a prerequisite to bringing the suit, the Attorney General had to have reasonable cause to believe that Hazelwood was engaged in a pattern or practice of resistance to full enjoyment of equal employment opportunity rights and that the pattern or practice "is of such a nature and is intended" to deny the full exercise of such rights. (P. 3, *supra*.) Intention was alleged in the complaint (App. 3-5), and government counsel promised to prove that what he thought was the relative lack of black professionals on the Hazelwood faculty was "the result of purpose." (Tr. 8.)

The court made no finding of purpose or intention on these allegations because on the record none could be made. We have said that, in holding that Hazelwood had violated Title VII, the court relied principally on the statistical disparity that it saw between the percentage of teachers in St. Louis City and County who are black and the percentage of Hazelwood teachers who are black. That is the paradigm of the evidence that this Court has said in *Washington* v. *Davis* and *Arlington Heights* is not sufficient to show a constitutional violation.[8] The court said

[8]We urge that the undifferentiated workforce data relied on below are not even good evidence of racially disparate effect, let alone

(continued)

that it considered the statistical evidence "in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria . . . ." (Pet. App. B 14b.) But the existence of "vague and subjective" hiring criteria by itself is no proof of purpose to discriminate; if such criteria are to be relevant at all, it can only be on a showing that they were manipulated to the disadvantage of black applicants, and there was no such showing here. (Pp. 73-78, *infra.*) The court also said that the statistical showing was buttressed by "evidence of actual discriminatory practices in the hiring of teachers during the period prior to the effective date of Title VII and the rejection of some 16 black applicants . . . ." The evidence regarding the 16 applicants shows at most that white applicants were hired for some positions for which the 16 black applicants were no worse qualified; it is not evidence of a purpose to discriminate against the blacks, especially when, during the same period, no fewer than 15 black applicants for teaching positions were hired in preference to dozens of white rivals. (Pp. 61-78, *infra.*)

The evidence regarding Hazelwood's hiring for years prior to 1972-73 was clearly not such as would sustain or even go any distance to support a finding of purposeful and

*(continued)
of purposeful racial discrimination. (Pp. 44-60, *infra.*) Among the lower court cases disapproved by the Court in Washington v. Davis, 426 U.S. 229,245 & n.12 (1976), are cases in which the courts did not rely on the inferior evidence of general workforce statistics but, rather, measured the direct impact of challenged employment practices on minority individuals who were actually affected. *See especially* Chance v. Board of Examiners, 458 F.2d 1167 (2d Cir. 1972). Thus, not even the best evidence of disparate racial impact, much less the once- or twice-removed evidence relied on below, suffices to show a discriminatory purpose. The decisions disapproved by the Court in *Washington* v. *Davis* also included cases involving use of "subjective" standards much like those applied by Hazelwood in its teacher hiring. *See* Wade v. Mississippi Cooperative Extension Service, 372 F. Supp. 126, 142 (N.D. Miss. 1974); United States v. City of Chicago, 385 F. Supp. 543, 560 (N.D. Ill. 1974).

intentional discrimination. The evidence was that Hazelwood did not hire a black teacher until 1969, for reasons that are not stated, but perhaps lack of applicants or rejection of offers; that in the 1960's Hazelwood did not engage in what today would be called affirmative action to encourage black application by recruiting vigorously on predominantly-black campuses; and that, in contravention of the policy of the man who was then superintendent of schools, an advertisement for teacher candidates that specified "white only" once ran in Hazelwood's name in Jackson, Mississippi, in 1962. (Pp. 10-11, *supra.*)

This is not the material from which a purpose to discriminate in hiring for the 1972-73 and 1973-74 school years could be discerned under the standards articulated in the *Arlington Heights* case and the cases cited by the Court in *Arlington Heights* for those standards. 97 S. Ct. at 564-65. This is plainly not one of those "rare" cases where standards have been so discriminatorily applied that the rule of *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886), comes into play, and this focuses the search for purposefulness on the other types of evidence referred to by the Court. There is not, as we have just noted, any "historical background" of racially motivated discrimination at Hazelwood. Unlike the school district in Denver, where for more than a decade after 1960 "the school authorities . . . carried out a systematic program of segregation affecting a substantial portion of the students, school, teachers and facilities within the school system," *Keyes* v. *School District No. 1*, 413 U.S. 189, 201 (1973), Hazelwood has never operated a segregated school. The doors of Hazelwood's schools are and have been open to blacks — teachers as well as students.

Neither is there anything suspicious about the "specific sequence of events leading up to" Hazelwood's hiring for the 1972-73 and 1973-74 school years that is under scrutiny here. Hazelwood continued in those years to select its teachers on the same careful basis that it had relied on

before in staffing its growing system. This case involves nothing even remotely related to the "sophisticated" use of voter registration requirements in Oklahoma as a "mode of discrimination" against blacks that was invalided in *Lane* v. *Wilson*, 307 U.S. 268, 275 (1939); the "Virginia plan . . . created to accomplish . . . the perpetuation of racial segregation by closing public schools and operating only segregated schools supported directly or indirectly by state or county funds" that was struck down in *Griffin* v. *County School Board*, 377 U.S. 218, 232 (1964); or the literacy test used by Alabama as a "contrivance . . . to thwart equality in the enjoyment of the right to vote . . . on account of race or color" that was voided in *Davis* v. *Schnell*, 81 F. Supp. 872, 879 (S.D. Ala.), *aff'd per curiam*, 336 U.S. 933 (1949).[9] Finally, there is nothing in the "legislative or administrative history" of the way Hazelwood carried out its hiring practices that implicates racial motivation in any way.

Hazelwood clearly was not shown, prima facie or otherwise, to have violated the equal protection clause. The showing against it, indeed, is of the kind that this Court has held is not a showing on which a constitutional violation can be premised. The question, then, is whether Congress can say that such a showing will satisfy a statute the only constitutional authority for which is Section 5 of the Fourteenth Amendment.

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[9]Hazelwood's employment practices are equally remote from Art. I, § 26, of the California Constitution, which "encourage[d] and significantly involve[d] the State in private racial discrimination" and was invalidated in Reitman v. Mulkey, 387 U.S. 369, 376 (1967), and from the Louisiana "tax" having the "plain purpose of penalizing the publishers and curtailing the circulation of a selected group of newspapers" that was struck down in Grosjean v. American Press Co., 297 U.S. 233, 251 (1936).

2. Congress May Not Prohibit State Conduct Under Section 5 Of The Fourteenth Amendment In The Absence Of Proof Of Purposeful Discrimination.

Enforcing statutes under Section 5 include prohibitions phrased in terms of constitutional rights, administrative provisions, and specific prohibitions *not* phrased in terms of constitutional rights. No substantial question of appropriateness under Section 5 arises with respect to legislation in the first category. The Court made that point in *United States* v. *Guest*, 383 U.S. 745 (1966), where it construed a provision of one of the nineteenth century Civil Rights Acts, now codified as 18 U.S.C. § 241, making it a crime for two or more persons to conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution. The Court held that this language included rights secured by the equal protection clause and went on:

> "In this connection, we emphasize that Section 241 by its clear language incorporates no more than the Equal Protection Clause itself; the statute does not purport to give substantive, as opposed to remedial, implementation to any rights secured by that Clause. Since we therefore deal here only with the bare terms of the Equal Protection Clause itself, nothing said in this opinion goes to the question of what kinds of other and broader legislation Congress might constitutionally enact under § 5 of the Fourteenth Amendment to implement that Clause or any other provision of the Amendment." *Id.* at 754-55.

To the extent that Title VII provides a remedy for conduct of a state or local government that would be reached by the equal protection clause itself, there is no doubt that it is "appropriate" legislation within the meaning of Section 5.

Neither is there any significant question of the appropriateness of legislation when the statute being considered is administrative—that is, when the provisions involved are not themselves prohibitory but, rather, establish remedial procedures to aid in the enforcement of substantive rights that are declared elsewhere. Title VII contains many examples of such non-prohibitory provisions.[10] Like general prohibitions phrased in terms of deprivations of constitutional rights, such administrative provisions do not expand upon the substantive prohibitions of the Constitution, and their scope thus raises no constitutional question.

a. This Court's decision in *Katzenbach* v. *Morgan* is not authority that the Section 5 enforcement power may be used to proscribe state conduct when no deprivation of constitutional rights is involved.

When Congress acts under Section 5 to prohibit specific conduct that is not described in terms of constitutional rights, the question of appropriateness inevitably arises. When, for example, Congress determines that some specific state conduct violates the equal protection clause, Congress

[10]Title VII provisions of this sort include those that (1) create the Equal Employment Opportunity Commission with power to investigate charges, eliminate challenged practices through informal methods, and bring (or intervene in a) suit if necessary, 42 U.S.C. §§ 2000e-4 through 2000e-9; (2) provide jurisdiction for United States district courts to hear cases brought by the Equal Employment Opportunity Commission, the Attorney General of the United States, or individuals, *id.* §§ 2000e-5, 2000e-6; (3) empower district courts to enjoin employers from violating Title VII and order any appropriate equitable relief, expressly including compulsory hiring, reinstatement, and back pay, *id.* § 2000e-5(g); (4) authorize assignment of cases certified by the Attorney General to be of general public importance to three-judge district courts with direct appeal to the Supreme Court, *id.* § 2000e-6(b); (5) authorize court-appointed counsel, waiver of fees, costs, or security, *id.* § 2000e-5(f); and (6) provide for award of attorneys' fees to prevailing private plaintiffs, *id.* § 2000e-5(k).

has, by prohibiting that conduct itself, defined the terms on which the balance of the relationship between the federal government and the states is to be struck. Thus it is not the neutral judiciary that makes this important judgment, but, rather, one of the partisans in the inevitable tugging and hauling that is our federal system.

The Court has upheld congressional determinations that certain types of state action deny the equal protection of laws. It did so, for example, in the case of a criminal provision of the Civil Rights Act of 1875 prohibiting any state officer from excluding persons from juries on grounds of race, 18 U.S.C. § 243. *Ex parte Virginia*, 100 U.S. 339 (1879). The Court's approval of legislation of this sort reached its farthest limit in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). There the Court upheld under Section 5 the prohibition contained in Section 4(e) of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(e), of enforcement of New York's general English-language literacy requirement against voters educated in Spanish-speaking schools in Puerto Rico. It did so without analyzing whether, independent of the statute, the Court would itself have stricken the state's literacy requirement in that application under the equal protection clause.

The Court in *Morgan* held, however:

> "[W]e perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause." 384 U.S. at 656.

The Court noted that Congress' prohibition of the denial to Puerto Ricans educated in Spanish of the right to vote was enacted "in the context of a general appraisal of

literacy requirements for voting, see *South Carolina* v. *Katzenbach*, [383 U.S. 301 (1966)], to which [Congress] brought a specially informed legislative competence . . . ." *Katenbach* v. *Morgan*, *supra* at 655-56. In *South Carolina* v. *Katzenbach*, the Court had upheld the constitutionality of selected other sections of the Voting Rights Act of 1965, finding that "various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered in a discriminatory fashion for many years." 383 U.S. at 333-34.

The Court also held that Congress could have concluded to void New York's literacy statute under Section 5 in order to remedy discrimination against Puerto Ricans in the provision of public services. The Court so concluded because voting is, in practice, a necessary gateway through which a minority suffering from discrimination must pass in order to achieve and preserve its right to equal treatment in the provision of government services at the local level. 384 U.S. at 652-53. Once again, however, the trigger justifying congressional action was the availability of a reasonable determination that Puerto Ricans were suffering from discrimination of some variety—and this must mean invidious, purposeful, unconstitutional discrimination—in New York.

Morgan accordingly is fairly read to mean only that where an informed and proper basis exists for Congress to determine that specific state conduct in fact violates the equal protection clause, a congressional prohibition of that conduct may be sustained under Section 5 without this Court's having fully to satisfy itself that it would necessarily reach the same decision unaided by the congressional judgment.

In its farthest reach as an invitation to congressional action, *Morgan* has not had the generative effect that might have been expected of it. There has been concern over its

implications, but these have not been developed. Commentators particularly have wondered whether principled adherence to footnote 10 of the opinion, 384 U.S. at 651 n.10, disallowing congressional dilution of Fourteenth Amendment rights, is possible if Congress is given liberal rein to enlarge such rights.[11] The cases that will test that concern and others have not been posed or decided.

Morgan was a focus of the Congressional debate that preceded the enactment of the 18-year-old vote statute that was before the Court in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). Proponents of the statute, enacted as a part of the Voting Rights Act Amendments of 1970, 84 Stat. 313, asserted that it was constitutional in the light of *Morgan*. Opponents denied that *Morgan* meant that Section 5 authorized Congress to go so far. *See Hearings on S. 818, S. 2456, S. 2507 & Title IV of S. 2029 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 91st Cong., 2d Sess. (1970). *See also* 116 Cong. Rec. 6946-51, 6954-59, 6960-69 (1970). When the dispute reached the Court, the event was inconclusive. It can be said, however, that five Justices of the Court did not believe that Section 5 authorized Congress to prescribe an 18-year-old voting age for state elections.

Mr. Justice Stewart spoke for three of the five and in his opinion explained *Morgan*, we believe, consistently with the way we have tried to explain it above. He said that, even so explained, its "decisional grounds were farreaching" and that it "gave congressional power under § 5 the furthest possible legitimate reach." 400 U.S. at 296. But the three-Justice opinion denied to Congress the power claimed for it in *Oregon* v. *Mitchell* "not only to . . . eradicat[e] situations that amount to a violation of the Equal Protection Clause,"

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[11] *See, e.g.*, Burt, *Miranda and Title II: A Morganatic Marriage*, 1969 Supreme Court Review 81, 115-34; Cohen, *Congressional Power to Interpret Due Process and Equal Protection*, 27 Stan. L. Rev. 603, 605-20 (1975).

which was what the *Morgan* statute did, "but also to determine as a matter of substantive constitutional law what situations fall within the ambit of the clause and what state interests are 'compelling.'" *Id.*

The concern over congressional enforcement powers is peculiar to the Fourteenth Amendment and its open-ended guarantees. Could Congress, for example, write the federal Administrative Procedure Act into law for all 50 states on the ground that its study of the administrative process has persuaded it that the evolving concept of due process of law today requires no less in the way of procedural protections than the federal Act affords? The other two Civil War amendments contain enforcement provisions comparable to Section 5 of the Fourteenth Amendment, but congressional enactments drawing their authority from these provisions designed to enforce the more narrowly focused substantive provisions of the Thirteenth and Fifteenth Amendments have not produced the same close divisions of the Court or the same concern outside it. In *Oregon* v. *Mitchell*, a majority of the Court could not be mustered for the proposition that a nationwide five-year suspension of the use of literacy tests for determining eligibility to vote was sustainable as appropriate legislation to enforce the equal protection clause, but the suspension was sustained as an exercise of the power of Congress under Section 2 of the Fifteenth Amendment to enforce the very specific guarantee of Section 1 of that amendment. *See also South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Gaston County* v. *United States*, 395 U.S. 285 (1969). Mr. Justice Stewart, the author of the principal doubting opinion on Section 5 in *Oregon* v. *Mitchell*, is also the author of the Court's opinion in *Jones* v. *Alfred H. Mayer Co.* 392 U.S. 409 (1968), which revivified Congress' power under Section 2 of the Thirteenth Amendment to enforce the abolition of slavery by eliminating all the badges and incidents of slavery, in the case then at hand by forbidding

discrimination against blacks in the sale of property through Section 1 of the Civil Rights Act of 1866, 42 U.S.C. § 1982.[12]

Conceivably, in the light of its heightened concern to guard against unjustified incursions on state sovereignty, *see, e.g., National League of Cities* v. *Usery*, 96 S. Ct. 2465 (1976); *Oregon ex rel. State Land Board* v. *Corvallis Sand & Gravel Co.*, 97 S. Ct. 583 (1977), the Court will wish to consider whether *Morgan* has taken it farther than it should properly go in allowing congressional intrusion into state affairs. The Court, however, need not undertake any reconsideration of *Morgan* in order to decide this case, for Title VII cannot pass muster even under *Morgan's* broad definition of the scope of Section 5. In the first place, Title VII's general prohibition of discrimination in employment practices is wholly unlike the narrow prohibition considered in *Morgan*, where the statute had been precisely drawn to deal with a specific situation in which Congress believed that Puerto Ricans were being denied the equal protection of the laws. Moreover, irrespective of what Congress intended Title VII to do, there is no basis to sustain its application here, where it is beyond doubt that there was no purposeful denial of equal protection. Finally, the disheartening irony of Title VII as interpreted and applied by the court of appeals is that it may very well compel more discrimination than it remedies.

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[12] *See also* Runyan v. McCrary, 96 S. Ct. 2586 (1976); Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975); Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 410 U.S. 431 (1973); Griffin v. Breckenridge, 403 U.S. 88 (1971); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969). Congress also "has power to fix the terms on which its money allotments to States shall be disbursed," Lau v. Nichols, 414 U.S. 563, 569 (1974), but the spending power is not involved in this case.

b. Congress intended the substantive prohibitions of Title VII to be no broader than the scope of the equal protection clause.

Morgan dealt with the legitimacy of a narrow provision aimed by Congress at carefully defined state action, a particular application of New York's voter eligibility laws, which had been closely examined for its tendency to bring about invidious discrimination against Puerto Ricans, United States citizens who had been educated under the American flag in their own language. Congress concluded that application of New York's literacy statute had to be restricted in order to protect Puerto Ricans from just such discrimination. Title VII, on the other hand, as originally enacted and as amended to apply to public agencies, was the broadest of reform measures. It covered a multitude of situations involving the hiring, firing and promotion of all who might be adversely affected if their race, color, religion, sex or national origin were considered. Congress focused on nothing even so specific as, for example, the possibility that subjective hiring criteria for teachers might be used to discriminate against blacks. It did not find that all employment practices that produce a disparate racial impact, regardless of the presence or absence of racial motivation, are in fact used as "instruments of invidious discrimination," *Oregon* v. *Mitchell*, 400 U.S. 112, 296 (1970) (opinion of Stewart, J.), or that they must be prohibited in order to deal with some other denial of equal protection.

What Congress meant to do when it came to apply Title VII, enacted in 1964 as part of the Civil Rights Act of that year, to state and local governments was to provide new remedies for substantive standards to which those governments were already subject. Congress understood when it extended Title VII to state agencies that the substantive prohibitions of the Act were no broader than those of the equal protection clause. That understanding is of the ut-

most significance because by the time the Equal Employment Opportunity Act of 1972 was enacted, *Katzenbach* v. *Morgan* had been decided and the way might have been thought open to enlarge the substantive prohibitions. Indeed, *Katzenbach* v. *Morgan* was discussed at length during debate on the bills that became the Equal Employment Opportunity Act of 1972, *see* 118 Cong. Rec. 4485-92 (1972), and was specifically cited as authority empowering Congress to enact legislative prohibitions under Section 5 broader than those of the equal protection clause itself. *Id.* at 4485 (remarks of Senator Ervin). Nevertheless, the proponents of the bills declined to embrace the broad proposition for which *Katzenbach* v. *Morgan* had been cited and did not even refer to the case as authority for the proposed legislation.

The cognizant Senate committee said:

> "The Constitution is imperative in its prohibition of discrimination by State and local governments. The Fourteenth Amendment guarantees equal treatment of all citizens by States and their political subdivisions, and the Supreme Court has reinforced this directive by holding that State action which denies equal protection of the laws to any person, even if only indirectly, is in violation of the Fourteenth Amendment. It is clear that the guarantee of equal protection must also extend to such direct action as discriminatory employment practices." S. Rep. No. 92-415, 92d Cong., 1st Sess. 10 (1971).

The other relevant committee report is to the same effect, H.R. Rep. No. 92-238, 92d Cong., 1st Sess. 18-19 (1971), and in Senate floor debate two principal advocates of extending Title VII to state and local governments, Senators Williams and Javits, stated their understanding that the equal protection clause already protected employees of state agencies against discrimination. 118 Cong. Rec. 1816, 1840 (1972).

To be sure, *Washington* v. *Davis* had not been decided when the bills that became the 1972 Act were under consideration. However, the doctrine stated in *Snowden* v. *Hughes*, 321 U.S. 1, 8 (1944), that there must be present "an element of intentional or purposeful discrimination" to make out a denial of the equal protection of the laws was familiar and was unimpaired by any decision of this Court. For those legislators familiar with the law of the equal protection clause, that doctrine provided the background against which they legislated explicitly to provide more effective remedies for equal protection violations affecting public employees. Those legislators were aware of a 1969 report of the Civil Rights Commission, which at one point suggested a broader view of the scope of the equal protection clause than any decision of this Court warranted. The Commission said that "[u]nconstitutional practices include not only those which are purposefully discriminatory, but also those which have the effect of creating or reinforcing barriers to equal employment opportunity." *See* 118 Cong. Rec. 1817 (1972). But the responsible committees quoted not that ambiguous and possibly misleading passage but rather what the report had to say of conscious, purposeful discrimination:

> "Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job." H.R. Rep. No. 92-238, 92d Cong., 1st Sess. 18 (1971); S. Rep. No. 92-415, 92d Cong., 1st Sess. 10 (1971).

The foregoing discussion suggests a narrowing construction of Title VII, at least in its application to state and local governmental bodies, that would avoid the constitutional doubts that attend the court of appeals' construction.[13] More significantly for the question of con-

[13]In addition, § 707(a), under which this suit was brought, indicates that in a suit by the Attorney General against a public body (or anyone else) (continued)

stitutionality that is presented on this writ, the discussion establishes that this Court cannot justify a decision sustaining the court of appeals' Title VII as appropriate judicial deference to an informed congressional judgment that unintended racial (or other) disparities resulting from the employment practices of state and local governments should be subject to federal sanctions. Congress made no such judgment. As Mr. Justice Stevens suggested in his con-

[13](continued)
intentional discrimination must be shown. Such a suit cannot be instituted unless the Attorney General first has reasonable cause to believe that someone is engaging in a pattern or practice of resistance to the full enjoyment of Title VII rights and reasonable cause to believe also that "the pattern or practice is of such nature and *is intended* to deny the full exercise of" such rights. (Emphasis supplied.) Under § 707(a) the Attorney General may request injunctive and other relief in a district court "against the person or persons responsible for such pattern or practice," *i.e.*, a pattern or practice intended to deny the full exercise of Title VII rights.

We would add that, although it has been assumed in opinions of this Court that mere disparate treatment of blacks (or others entitled to the protection of Title VII) in employment practices suffices to make a case under Title VII, *see* General Electric Co. v. Gilbert, 97 S. Ct. 401, 408-09 (1976); Washington v. Davis, 426 U.S. 229, 246-47 (1976), no decision of this Court so holds. In Griggs v. Duke Power Co., 401 U.S. 424 (1971), there was a long history of blatantly discriminatory practices, and the effect of these was frozen by the challenged testing and educational requirements; this was an application of very traditional remedial law, like Wright v. Council of the City of Emporia, 407 U.S. 451 (1972), discussed in Washington v. Davis, 426 U.S. 229, 243 (1976). Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975), is comparable to *Griggs*. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Court held that Green could prevail only if he could prove that McDonnell Douglas' asserted reason for not rehiring him was only a pretext—"in fact a coverup for a racially discriminatory decision." *Id.* at 805. In Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1973), the Court held that, even though a policy of not employing aliens had a disproportionate impact on persons born abroad and thus might fairly be thought to relate to national origin, Title VII was not violated because it does not prohibit discrimination against aliens. Thus, the undoubted purposeful discrimination was not within the terms of the statute, and the unintended discriminatory effect, though implicating a form of job discrimination affected by the statute, was not within its reach.

curring opinion in *Fitzpatrick* v. *Bitzer*, 96 S. Ct. 2666, 2672 (1976), — he was "not sure that the 1972 Amendments were 'needed to secure the guarantees of the Fourteenth Amendment,' " — a case involving application of Title VII as construed below to a state agency such as Hazelwood is a world away from *Morgan*.

c. There was no denial of the equal protection of the laws here under controlling decisions of this Court and no room for a contrary congressional judgment.

In *Morgan* the Court did not itself decide whether New York's English literacy requirement violated the equal protection clause, or whether Puerto Ricans there were suffering other unconstitutional denials of equal treatment in the provision of local services. The Court suggested, however, that it might well have answered these questions in the affirmative. Congress, in Mr. Justice Stewart's later words, was eradicating a situation that amounted to a violation of the equal protection clause. Here, on the other hand, Hazelwood has been found in violation of Title VII without proof of any purposeful discrimination. The conduct in this case is conduct that, on the basis of this Court's very fresh precedents, does not violate the equal protection clause. In the light of those precedents, the Court cannot find that Congress could reasonably have determined that the conduct is violative of the equal protection clause.

It is highly relevant that, although the courts have broad-ranging remedial powers to enforce constitutional rights, *compare Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), in attempting to eradicate a denial to students of the equal protection of the laws, they may not invoke that power to interfere with the operation of a school district that has itself not purposefully engaged in unconstitutional conduct. *Milliken* v. *Bradley*, 418 U.S. 717 (1974). *See also Rizzo* v. *Goode*, 423 U.S. 362 (1976). There is no occasion for remedy where there is no constitutional violation.

d. Title VII as construed below encourages discrimination and therefore cannot be "appropriate legislation to enforce the equal protection clause.

Title VII as applied below diverges sharply from the nondiscrimination principle of the equal protection clause and therefore cannot be, within the terms of Section 5, appropriate legislation to enforce the Fourteenth Amendment. In that application, Title VII requires Hazelwood to engage in racially oriented hiring, not to remedy a past constitutional wrong but because its faculty has fewer blacks than an outside measure suggests that it should have. How can a statute that in practice requires school districts such as Hazelwood to hire expressly on the basis of race, religion, sex or national origin be consistent with the requirement, as stated in *Morgan*, 384 U.S. at 650, that enforcing legislation under Section 5 must tend to "secure *to all persons* . . . the enjoyment of equal protection of the laws"? (quoting *Ex parte Virginia*, 100 U.S. 339, 345 (1879)) (emphasis supplied). When a court requires such a district purposefully to hire blacks, Catholics, Mexican-Americans or men — irrespective of how their qualifications compare with those of competing applicants — what remains of the requirement of the Constitution that the equal protection of the laws be secured to *all*, including those who have necessarily been excluded in order to accommodate the district's consciously discriminatory hiring?

The congressional prohibition of the New York English literacy requirement that was before the Court in *Morgan* was required to deal with a denial of equal protection of laws but even then did not compel New York to make any conscious distinctions among its citizens and favor some over others. There the statute added Puerto Ricans to New York's voting rolls, without requiring any compensating removal of members of some other class. Here, by contrast, Hazelwood has not violated the equal protection clause, yet it must allocate among competing applicants jobs that are

scarce resources. Teaching positions cannot be expanded at will, like lists of eligible voters; one applicant's acceptance is a refusal for scores of others.

The short of it is that Title VII cannot constitutionally be interpreted and applied to a public body as it was by the court of appeals here.

II. SINCE HAZELWOOD'S HIRING PRACTICES WERE DIRECTLY SHOWN NOT TO EXCLUDE A DISPROPORTIONATE NUMBER OF BLACK APPLICANTS, COMPARATIVE WORKFORCE STATISTICS, FAULTY IN ANY EVENT, CANNOT SUSTAIN A FINDING OF A VIOLATION OF TITLE VII.

In this part of our Argument we assume, contrary to what we have contended above, that unintended racially disparate consequences of hiring practices are sufficient as a matter of statutory and constitutional law to make out a violation by a public body of Title VII of the Civil Rights Act. We undertake here to demonstrate that no such consequences were shown on the record and that, indeed, the record shows that Hazelwood has been hiring proportionally more blacks than whites as teachers.

The court of appeals ignored the evidence that black applicants for faculty positions at Hazelwood were hired at a rate well in excess of the rate for white applicants. It held that, given what it perceived to be the nature of Hazelwood's hiring process, a prima facie case of unlawful discrimination was established by evidence that the proportion of Hazelwood's teaching staff that was black was substantially below the black proportion of the overall teacher workforce employed in St. Louis City and St. Louis County combined. (Pet. App. B 14b.) The court erred in relying on this comparison when direct evidence of Hazelwood's hiring practices was available, and in any event the comparative workforce statistics relied on by the court were so flawed as to be useless.

A. Since the Record Showed the Rate at Which Hazelwood Hired Black Applicants and That Rate was Higher Than the Rate at Which It Hired Applicants Generally, Reliance on Area Workforce Statistics Was Unwarranted.

The statutory issue raised by the Government's suit is whether Hazelwood used employment practices prohibited by Title VII in its selection of new teachers from among those persons who were available for employment. The obvious primary source of proof in respect of such a charge is evidence as to the employer's treatment of persons actually identified as available to be hired. Proof of a racially representative workforce composition would not overcome a showing of racial discrimination in the treatment of an individual applicant for employment. Likewise, failure to employ the same proportion of minority employees as does another employer or group of employers proves nothing if the employer whose practices are challenged treats all applicants fairly and without regard to race.

No court has ever construed, and Congress clearly never intended, Title VII to impose on a public employer an obligation to conduct an affirmative hiring program designed to replicate in the employer's own workforce the composition of the local labor market. "A public employer may constitutionally take its applicants as it finds them." *Castro* v. *Beecher*, 459 F.2d 725, 733 (1st Cir. 1972). In appraising the lawfulness of an employer's hiring practices under Title VII, the question is whether those practices select individuals "in a racial pattern significantly different from that of the *pool of applicants.*" *Cf. Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 425 (1975) (emphasis supplied).

Statistical evidence may be used to measure the impact of employment practices. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 & n.7 (1971). But "statistics must not be accepted uncritically, without careful consideration of all

relevant factors." *Logan* v. *General Fireproofing Co.*, 521 F.2d 881, 883 (4th Cir. 1971). Particularly in dealing with questions involving the employment of a select group such as qualified professional educators, it is necessary that statistical data be very carefully refined. *See, e.g., Chance* v. *Board of Examiners*, 330 F. Supp. 203, 214 (S.D.N.Y. 1971), *aff'd*. 458 F.2d 1167 (2d Cir. 1972). Where professional hiring is involved and the "pool of applicants" can be determined precisely, it is the experience of those persons who make up the pool — not a hypothetical group of potential applicants — that must be examined.

There are, to be sure, some situations in which an employer's compliance with the demands of Title VII is properly measured by reference to labor market statistics. In a case of alleged discrimination in hiring, labor market composition may be considered where the racial breakdown of the employer's actual applicant flow is unknown; area statistics can serve as a surrogate means of calculating the number of minority group members that are likely to apply or be available for employment. And it may be appropriate to refer to area workforce statistics where an employer, rather than passively receiving job applications, tries to induce or discourage applications from some sources; in such a situation, it may be asserted that the employer has manipulated the racial composition of its applicant flow and thereby rendered inadequate an analysis restricted to its treatment of actual applicants.

Where the racial composition of an employer's applicant flow is known, where the effect of the employer's practices in handling the flow can be directly measured, and where there is no evidence that the employer has manipulated that flow so as to reduce minority representation, that employer cannot be found to have violated Title VII simply because minority group members are not represented in its workforce to the extent that they are represented in other employers' workforces. This, we submit, is Hazelwood's case.

There is evidence as to the racial composition of Hazelwood's applicant flow. There is evidence that Hazelwood's practices in regard to its job applicants are neutral in character (*i.e.*, not racially based) and that those practices do not operate to exclude black applicants from employment in disproportionate numbers. There is no evidence that Hazelwood discourages black applications in the first instance or that any past discouragement — and none was shown — affected the number of black applicants since 1970 or, particularly, since Title VII was amended to reach Hazelwood in 1972.

The relevant data are not complicated:

For the 1971-72 school year, there were 3,127 applicants for 234 teaching positions at Hazelwood; for 1972-1973, Hazelwood hired 282 of 2,373 applicants. (Pet. App. A 4a.) Thus, Hazelwood hired only 7.5 percent of all applicants for 1971-72 and 11.9 percent for 1972-73 — a two-year average of 9.4 percent.[14]

As for the hiring rate for black applicants, there was a net increase of 16 in the number of black teachers and other professionals at Hazelwood from 1970 to the start of the 1973-74 school year.[15] And it is known that at least one

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[14]The record also shows that Hazelwood hired 123 new professional staff members for 1973-74 (Pl. Ex. 55) but does not disclose how many persons applied for jobs for that year, although at the time of trial in March 1974, there were 2300 applications on file (Tr. 38).

[15]The record as to these matters, which consists of Hazelwood's submissions to the Department of Health, Education and Welfare and the Equal Employment Opportunity Commission, shows faculty figures for 1970-71, 1972-73 and 1973-74. (Pl. Ex. 55.) There were six black professional employees — apparently all teachers — in 1970-71 and 22 black professional employees in 1973-74. Apparently until 1973 faculty figures were submitted to the Government agencies only every two years. In the Statement (p. 8, *supra*) we have stated the number of black teachers on the Hazelwood faculty in 1971-72 as shown in

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other black applicant was offered a job but had already accepted another position.[16]

The Government, after an exhaustive FBI search of Hazelwood's records, offered an exhibit that originally identified 61 persons alleged to have been unsuccessful black applicants for teaching jobs in the Hazelwood District in 1971-72, 1972-73 and 1973-74 — mostly the latter two years. As corrected before being introduced, the exhibit (Pl. Ex. 49) identified 54 applicants, but one of these was the applicant who was offered a job and another was among those hired. As we will explain (see p. 67, *infra*), at least four of the remaining 52 either applied for nonexistent positions or did not possess even the minimum credentials required for the jobs they sought; therefore, no more than 48 eligible but unsuccessful applicants were identified. Sixty-five blacks have thus been identified as having applied for professional faculty positions for school years 1971-72 through 1973-74: 48 who were unsuccessful, 16 who were offered positions and accepted them, and one who declined an offer from Hazelwood. Accordingly, it appears that job offers were made to as many as 26.2 percent of black applicants.[17] Even if another 30 blacks, not identified at trial, applied for the 1971-72 school year — an implausibly high number since some applicants for that year are already included in the list of 65 known applicants and the number of black applicants has apparently grown each year — the hiring rate for the three-year period would still be 17.9 percent.[18]

[15](continued)
Hazelwood's records and have made substantially the same calculations as appear in the text here but somewhat simplified. Here we confine ourselves to the record figures.

[16]The applicant who had accepted another offer was Reid. (Tr. 193-94.) There may, of course, have been other such cases.

[17]*I.e.*, 17 divided by 65.

[18]*I.e.*, 17 divided by 95. Moreover, even if there were not 95 but twice that many black applicants — an impossibly high number, given the
(continued)

At least since 1971, then, it appears that blacks who have applied for teaching positions at Hazelwood have been hired at a rate substantially in excess of the rate at which applicants generally have been hired. Because there is no evidence that during this period Hazelwood either discouraged blacks from applying or sought non-black applicants in disproportionate numbers or that there were lingering effects of any past failures to encourage black applications, the relative rates of hire are the proper index to Hazelwood's treatment of its black applicants. A gross comparison of Hazelwood's proportion of black teachers with the proportion in even the most relevant labor market is neither warranted nor useful.

B. Even If Hazelwood's Hiring Practices Are Considered in Light of Area Workforce Statistics, It Is Clear That Those Practices Have Not Resulted in a Disproportionate Exclusion of Blacks.

The court of appeals' fundamental error in disregarding data reflecting Hazelwood's actual treatment of black job applicants in favor of workforce statistics is discussed in the preceding section of this part of our Argument. Even if workforce statistics were somehow relevant here, the court of appeals' selection and analysis of these data are flawed in three major ways.

First, the court, overruling an express finding of the district court, held that the appropriate labor market against which Hazelwood's hiring should be compared was the combined teacher employment of the City of St. Louis and St. Louis County. Second, the court of appeals simply ignored the drastic effect on area workforce figures of the hiring practices of the City of St. Louis, whose adherence to

[18](continued)
apparent thoroughness of the FBI search — the hiring rate would still be 8.9% (*i.e.*, 17 divided by 190).

a racial hiring quota both inflates the proportion of black teachers of the City-County labor market and diverts to the City school system black applicants who might otherwise be available to small outlying districts such as Hazelwood.[19] Finally, the court of appeals compared the inflated minority workforce statistics of the City and County, not with Hazelwood's post-1972 hiring, but rather with Hazelwood's overall workforce composition, which was largely the product of experience prior to the amendment of Title VII in 1972.

In short, the court of appeals found a prima facie showing of discrimination in violation of Title VII on the basis that Hazelwood failed to conduct its hiring so as to replicate the racial composition of an arbitrarily selected measuring group, which was itself largely affected by the racially oriented, preemptive hiring practices of a single dominant employer. The court's analysis is obviously unsound for all the foregoing reasons. If an analytically valid comparison is made between Hazelwood and other employers, it becomes apparent that Hazelwood's hiring practices have, at least since Title VII became applicable to it, resulted in the hiring of blacks substantially in proportion to black representation in the appropriate measuring group.

[19]The City's hiring practices are described at p. 52, *infra*.

1. Hazelwood Has, Since Title VII Became Applicable To It, Hired Black Teachers Substantially In Proportion To The Black Share Of The Pool Of Applicants In The Labor Market Who Are Reasonably Available For Employment By Hazelwood.

The court of appeals compared the percentage of Hazelwood's workforce that is black with the black percentage of the workforce in a labor market defined by the court as the City of St. Louis and St. Louis County. It found a disparity sufficient, in light of Hazelwood's hiring procedures as the court understood them, to create a prima facie case of unlawful discrimination. In selecting the appropriate labor market, the court of appeals simply rejected the contrary holding of the district court (Pet. App. A 18a-19a) and decided that, since a majority of the teachers hired by Hazelwood for 1972-73 resided in that geographical area, it should be presumed that all teachers residing in that area are available for and interested in employment by Hazelwood (Pet. App. B 10b n.7).[20] The court erred in its selection of the appropriate labor market. Moreover, its treatment of the available statistical evidence pertaining to the labor market that it did select was also erroneous. As the following discussion will make clear, even using the labor market definition adopted by the court of appeals, the black proportion of the area workforce available for employment by Hazelwood is possibly 4 percent and in no event more than 6 percent. Moreover, since Title VII

[20]The source of the residence figures relied on by the court of appeals is obscure. Such evidence as the record contains suggests that while a distinct majority of the teachers hired by Hazelwood resided in the City-County area when they applied for teaching positions, the school district in fact attracts applicants from nearby southern Illinois and other states. Of the 16 unsuccessful job applicants as to whom the court of appeals found discrimination, four (Carson, Triplett, and the two Wilsons) resided out of the designated area and two others (Novel and Smith) were attending college in Minnesota when they applied.

became applicable to Hazelwood, between 3 and 4 percent of Hazelwood's new teachers have been black. Correctly analyzed, therefore, the statistical comparison shows not a disparity in minority hiring but rather substantial equivalency in treatment for presumed job applicants. It follows that a prima facie showing of discrimination cannot, in Hazelwood's case, be founded on the results of statistical analysis of workforce data.

a. The pool of applicants

The court of appeals, noting that of the 19,425 employed teachers in St. Louis City and County in 1970,[21] 2,997 (15.4 percent) were black,[22] concluded that the black share of the labor market — against which Hazelwood's hiring would be measured — was 15 percent. (Pet. App. B 10b.) The court failed to carry its analysis the necessary next step. A comparative workforce analysis depends on the inference that the labor market workforce composition is representative of those individuals who are in competition for the positions at issue; where the composition of the labor market workforce is not representative of presumed applicants, the data must be adjusted before any comparisons can be made.

The most significant adjustment required here is the exclusion of the impact of the racially-based teacher hiring practices of the City of St. Louis on the area averages. The St. Louis City school system maintains a teaching staff that is approximately 50 percent black. (App. 94-95.) Indeed, it recruits aggressively in order to meet its goal (App. 92-93) and selects teachers by race to fill vacancies as they occur (App. 96). The City's 50 percent quota is not determined by reference to the composition of the labor market workforce or the group of actual applicants for City school positions; rather, it represents what the City perceives to be a

[21] 1970 Census Tables 86 & 122. (App. 409-10.)

[22] 1970 Census Tables 93 & 127. (App. 409-11.)

desirable accommodation to the composition of the City's population (40.8 percent black)[23] and its public school enrollment (65-70 percent black). (App. 94-95; Tr. 333, 352.) In 1970, reflecting the City school system's hiring practices, 41.7 percent of the teachers living in the City of St. Louis were black. And of the 2,997 blacks employed as teachers in the combined City and County area, 2,182 — a 72.8 percent share — lived in the City. The County's 815 black teachers amounted to only 5.7 percent of the teachers living in the County.

There are not enough potential black teachers in the St. Louis City and County area to allow the City to maintain a teaching staff that is 50 percent black and also permit the outlying districts to increase the black representation on their faculties appreciably. Although in 1970 blacks constituted 19 percent of the combined City and County population,[25] only 6.4 percent of the City-County population with at least four years of college—clearly an unobjectionable minimum qualification for public school teachers — was black.[26] Moreover, one of every two black persons in the City-County area with four years or more of college was already employed as a teacher in 1970.[27]

[23] 1970 Census Tables 81 & 91. (App. 408-09.)

[24] The 1970 Census shows that of the 19,425 employed teachers in the City and County, 2,997 (15.4%) were black (see notes 21 & 22, *supra*). The City figures were 2,182 of 5,238 (41.7%) (App. 409-10); the County statistics 815 of 14,187 (5.7%) (App. 410-11). If only 15% (786 of the 5,238) teachers in the City had been black, the City-County average would have been only 8.2% black (1601 of 19,425).

[25] 299,847 of 1,573,587 inhabitants were black. (Census Tables 81 & 119; App. 408, 410.)

[26] Of 92,733 inhabitants with at least four years of college, only 5,946 were black. (Census Tables 120 & 125; App. 410-11.)

[27] Of 5,946 blacks with at least four years of college, 2,997 (50.4%) were employed as teachers. (Census Tables 91, 93, 125 & 127; App. 409-11.) In contrast, only 16,428 of 86,787 non-blacks (18.9%) with equivalent education were employed as teachers. (Census Tables 86, 93, 120, 122 & 127; App. 408-11.)

The population of St. Louis County was only 4.8 percent black in 1970.[28] Blacks constituted only 1.9 percent of the County's college-educated population,[29] and, as in the City of St. Louis, half of those persons were already employed as teachers.[30]

The City's racially-based hiring practices — to which the Government takes no exception and, indeed, which it appears to endorse[31] — combine with these demographic facts to render impossible of achievement the racial distribution evidently contemplated by the court of appeals. Using 1970 figures, if 50 percent of the teachers in the City of St. Louis had been black, and 15 percent — instead of 5.7 percent — of the County's teachers had been black, there would have been 4,747 black teachers out of a total of 19,425 teachers in the area.[32] This would mean not only that nearly a quarter of all teachers would have been black (compared with the 6.4 percent black proportion of those who have completed four years of college), but also that four-fifths of all blacks with at least four years of college would have been employed as teachers.

It is apparent that, as long as the City of St. Louis adheres to its quota hiring practice, the remaining school districts

[28]45,579 of 951,353 inhabitants were black. (Census Tables 119 & 125; App. 410-11.)

[29]1,598 of 82,529 inhabitants with 4 years of college were black. (Census Tables 120 & 125; App. 410-11.)

[30]815 of 1,598 (51%) were teachers. (Census Table 125; App. 411.)

[31]There is, to be sure, a bizarre touch to the Government's use of an official of the City of St. Louis school district — which deliberately restricts its hiring of non-blacks to a level well below their 85% average area workforce composition, regardless of their representation among actual applicants — as part of an effort to prove that Hazelwood discriminates against blacks by hiring actual black applicants at twice the rate at which it hires whites.

[32]The City's 50% quota would yield 2,619 black teachers out of 5,238; the County's 15% representation would yield 2,914 out of 14,187.

in the City-County area must share an artificially restricted portion of potentially qualified black teachers. Conversely, the heavy draw by St. Louis on the pool of college-educated blacks suggests that the job-seekers — that is, unemployed teachers or those not content with their present situations — are disproportionately likely not to be black.[33]

In addition to skewing the labor market statistics, the practices of the City of St. Louis appear to have other effects on the ability of other County school districts to hire qualified black teachers. The evidence established that one of the major sources of new black teachers in the area is Harris Teachers College, whose graduating class in 1973 was 60 percent black. (Tr. 166.)[34] But Harris is operated by the school system of the City of St. Louis, which in consequence occupies an advantageous position in the recruitment of Harris graduates; according to the City's director of personnel, the City hires "most" of the black Harris graduates (Tr. 336), and the City's school principals have ample opportunity to scout and recruit the "better ones" (*id.*). The City thus diverts blacks who might otherwise apply for employment at County school districts such as Hazelwood.

Finally, the nature of the labor market in the teaching profession suggests that it is wrong to assume — as the court of appeals necessarily did — that all presently employed teachers in the City-County area are potential Hazelwood employees. There is, first, no reason to assume a total job mobility within the area; it is the City of St. Louis,

[33]Of the City-County area's 73,308 inhabitants with at least four years of college who were *not* employed as teachers in 1970, only 2,949 were black — a representation of only 4%. In St. Louis County alone, of the 68, 342 college-educated inhabitants not employed as teachers, only 783 — or 1.1% — were black.

[34]The court of appeals believed that Harris was one "of the two predominantly black colleges in Missouri." (Pet. App. B 4b.)

not outlying Hazelwood,[35] that is at the center of the regional transportation network. And it is characteristic of the teaching profession that job mobility is not common, particularly among more experienced teachers and particularly in times like the present, when the supply of teachers exceeds the demand for them. Additionally, there is evidence that at least in some specialty areas Hazelwood's standards for employment are higher than those used by other districts in the region; the evidence shows, for example, that Hazelwood requires its business education teachers to have vocational certificates in that field, while some other districts do not.[36] Moreover, Hazelwood does not offer employment in all educational fields: special education, for example, is conducted for all St. Louis County districts at a central facility, and Hazelwood consequently employs no special education teachers. (Tr. 83-85.)

b. Hazelwood's hiring

For the 1972-73 and 1973-74 school years, Hazelwood hired 405 new employees,[37] while the District's black professional staff increased from seven to 22 (a net increase of 15). (Pp. 7-8 & n.3, *supra*.) If the number of blacks hired was no greater than the net increase, then 3.7 percent of Hazelwood's new hires for the period were black.[38] For 1973-74 alone, five of Hazelwood's 123 new hires were black — a rate of 4.1 percent. (Pl. Ex. 55.)

[35]Hazelwood shares a short common boundary with the City of St. Louis but primarily serves an area of St. Louis County that was predominantly rural and undeveloped until the 1960's and has only recently been subjected to the pressures of suburban growth.

[36]*E.g.*, Tr. 49, 64. Applicants Ealy (who lacked such a certificate) and Catlin (who lacked a similarly required vocational home economics certificate) both obtained positions in St. Louis City schools. (Tr. 52, 218.)

[37]282 for 1972-73 and 123 for 1973-74. (Pet. App. A 4a; Pl. Ex. 55.)

[38]*I.e.*, 15 divided by 405.

Since blacks constitute only 6.4 percent of the City-County population with at least four years of college, only 4 percent of the college-educated City-County population not already employed as teachers, only 5.7 percent of the St. Louis County inhabitants employed as teachers, and only 1.1 percent of the County's college-educated population not already employed as teachers, Hazelwood's black hiring rate of not less than 3.7 percent is not only not disproportionately low but is even substantially equivalent to the composition of a group consisting of those persons most reasonably assumed to be available for employment at Hazelwood.

2. **Since Hazelwood Has Hired Black Teachers Substantially In Proportion To The Black Share Of The Pool Of Those Available For Employment, The Fact That Hazelwood's Overall Teacher Workforce Includes A Lower Proportion Of Blacks Than Are Employed As Teachers In The Labor Market Is Not Evidence That Hazelwood Discriminated In Hiring.**

Since the statutory issue presented in this case is whether Hazelwood discriminated against blacks in hiring after Title VII became applicable to it in 1972, the court of appeals erred in measuring Hazelwood's conduct by using statistics that commingle the results of pre-1972 and later hiring. The practical effect of comparing the number of black teachers in 1973-74 (22) with total faculty at that time (about 1200) is to base a finding of discrimination in hiring for the 1972-73 and 1973-74 school years on the fact that Hazelwood employed only six blacks out of approximately 1,000 professional staff members in 1971, the year before Title VII applied to Hazelwood. (Pl. Ex. 55.)[39] That is no

[39]The court of appeals considered it significant that Hazelwood employed its first black teacher in 1969 (Pet. App. B 9b), but the court

(continued)

proper basis for such a finding. The employment practices Hazelwood used in hiring the teachers who were staff members in 1971 could be relevant as evidence of a violation of Title VII in later years only if Hazelwood purposefully discriminated against blacks in the earlier years — in contravention of the equal protection clause — and if its non-racially motivated employment practices beginning in 1972 served somehow to perpetuate the effects of the past purposeful discrimination. *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971). Neither standard is met here.

In the first place, there is neither direct nor indirect proof here of any purposeful discrimination by Hazelwood. There is no evidence what proportion of applicants for jobs at Hazelwood were black before 1971-72. The evidence depicts a small rural school district being overtaken by suburban growth in the 1960's and 1970's. The evidence shows that no blacks resided in the district for many years; and it is not unreasonable to infer that black teachers did not make application to Hazelwood during that period.[40] Moreover, it must be recalled that, as the evidence shows, teachers were in great demand during the 1960's; and the present-day pattern of job-seeking, well illustrated in the record of this case, simply did not exist. In short, there is every reason to believe that Hazelwood did not receive applications from significant numbers of blacks prior to 1972, and no evidence to the contrary. There is certainly no evidence in the record that Hazelwood ever rejected an actual black applicant for reasons of race.

[39](continued)
overlooked evidence that Hazelwood had earlier made job offers to black applicants that had not been accepted (App. 52).

[40]Hazelwood had no occasion to maintain a dual school system and cannot fairly be made to bear consequences of other districts' having done so.

Surely the mere absence of black teachers from a school district that had few or no black students; a failure to recruit at predominantly black schools; a stray newspaper advertisement in 1962 for whose discriminatory contents the District may or may not be responsible; and the possible use of some old application forms bearing racial identifications do not add up to purposeful discrimination such as would justify a finding that Hazelwood had denied to black teacher applicants the equal protection of the laws before 1972.

Equally importantly, even if a court could find invidious discrimination by Hazelwood prior to 1972, which we vigorously dispute, there is no issue here about perpetuation of any effects from those earlier years. This is a case involving present hiring practices only — there is no issue here about seniority rights, transfer opportunities or promotions; the effects of discrimination in those areas have a high potential for persistence. On the other hand, a 1962 newspaper advertisement or a failure to visit a predominantly black college campus in 1964 has no logical effect on (1) whether a black prospective teacher will apply for a job in 1972, 1973 or 1974 or (2) how his application will be handled if he does apply.

The analysis of the court of appeals should also be rejected because to hold that a prima facie showing of discrimination is created by Hazelwood's failure to equal the average area workforce composition is to make the showing irrebuttable; there were simply not enough qualified black applicants. Even if Hazelwood had hired every willing and minimally qualified black applicant for a teaching position prior to the trial in early 1974, the District's teaching staff would have included no more than 70 blacks[41] out of about 1,200 (see p. 8 n.5 *supra*)

[41]*I.e.*, 22 blacks actually employed in 1973-74 plus the 54 applicants identified at trial (Pl. Ex. 49), less one (Reid) who turned down a job of-
(continued)

— no greater than a 5.7 percent share. And the court of appeals found no fault in Hazelwood's rejection of all but 16 applicants; accordingly, even if Hazelwood had hired all 16 as to whom the court of appeals found discrimination, the District's professional faculty would have included only 38 blacks out of 1,200 — a share no larger than 3.1 percent.

The demonstrable absence of qualified black applicants in the 1970's is complemented by the fact that the lower court's labor market workforce standard levies an impossible burden on all the St. Louis County school districts. It is obvious that if the City of St. Louis adheres to its goal of 50 percent black representation on its teaching staff — more than three times the "average" endorsed by the court of appeals — then all or most of the County school districts must employ fewer than the "average" number of blacks. Not every employer can be "average" if the dominant single employer is so far above the "average." This proposition requires no extended proof: if the City employs one fourth of all teachers in the labor market, and ensures that 50 percent of its workforce is black, while the County districts raise their average black employment to 15 percent, the labor market workforce will be 23.8 percent black. And the County districts will still be considered deficient in their employment practices.

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[41](continued)
fer, one (Carol Jackson) who was in fact employed by Hazelwood, three (Boyd, Catlin and Ealy) who lacked the vocational certification required for the positions they sought, and another (Cotton) who applied for a specialty Hazelwood did not offer. See p. 67, *infra*.

III. THE EVIDENCE AS TO 14 BLACK APPLICANTS WHO WERE NOT INTERVIEWED AND TWO OTHERS WHO WERE INTERVIEWED BUT NOT HIRED DOES NOT SHOW OR TEND TO SHOW THAT HAZELWOOD DISCRIMINATED IN HIRING, AND THE HANDLING OF THE 16 CASES DEMONSTRATES THAT HAZELWOOD'S HIRING PROCEDURES WERE APPLIED FAIRLY TO BLACKS.

The court below made a ritual bow to the need to be cautious in the use of statistical evidence. (Pet. App. B 8b.) Further, it indicated that the comparative workforce-labor market statistical evidence on which it relied did not stand alone. It said that it had been "considered in the light of Hazelwood's hiring procedures . . . ." (*Id.* at 14b.) It said that the statistical proof was buttressed by the showing of Hazelwood's history of employment of blacks. (*Id.*) And it said that the statistical proof was buttressed also by the showing that Hazelwood had rejected the 16 black applicants whose cases it discussed. (*Id.*)

We have seen that the court was far from cautious in its approach to statistics but instead adopted wholesale a statistical approach that inevitably led it far astray. We have seen that the history to which the court referred is of little if any relevance to the statutory period here, which began in 1972. As for the hiring procedures, however "vague and subjective" the criteria for employment decisions that Hazelwood used, the procedures generally and the criteria criticized by the court are neutral on their face and import nothing as to discrimination save as there is proof that they were improperly manipulated in order to discriminate. We have seen that this was not the case as a general matter — that statistically, black applicants for teaching positions appear to have been favored, not disfavored.

There remain the cases of the 16 unsuccessful black applicants. We undertake here to show that these cases

do not at all buttress the statistical proof on which the court primarily relied and that, in fact, the court's finding that prima facie cases of discrimination were made as to the 16 applicants is explicable only on the assumption that a pattern or practice of discrimination had been proved and on the assumption that these applicants — only 16 of 52 that the Government presented — must have been the individual victims. No question has been presented by us on certiorari specifically concerning the correctness of the court of appeals' judgment as to the 16 cases — this Court, we recognize, does not sit to resolve disputes over the weight of evidence — but we wish to rebut any suggestion that the decision below is sustainable independently on the basis of the 16 cases without regard to the fatally flawed statistics. At the very least, if we are right about the errors in the court's decision otherwise, we are entitled to a remand for reconsideration of the 16 cases untainted by a prior error-infected finding of a pattern or practice of discrimination. Further, the discussion hereunder should emphasize the point that Hazelwood's hiring procedures not only were neutral on their face but also were not manipulated to the disadvantage of black applicants.

A. Hazelwood's Two-Step Hiring Process, Involving First Selection for Interviews and Then Interviews, Is Not a Racially Discriminatory Process on Its Face.

Hazelwood's hiring process operates in the following manner:

Applications are received at all times by the District's personnel director. When Hazelwood receives an application, the personnel director acknowledges receipt and files the application, recording in a card file the applicant's stated grade and subject preferences. Applications not acted on are discarded after one year, although applicants are notified of their opportunity to reactivate their applications

and thus avert such a disposition. The personnel director does no hiring or formal interviewing and speaks personally only to those applicants who happen to visit his office. (App. 27-29.)

When a teaching vacancy occurs or is projected by the principal of one of Hazelwood's 23 schools, the coordinator of elementary or secondary education, as appropriate, requests the personnel director to provide a given number of applicants for interview. The number of applicants requested depends on such factors as the number of simultaneous vacancies, the subject area involved and other considerations the requesting administrator may consider significant. (App. 15, 29-31.) There is a range of two or three up to as many as 10 per opening. (App. 15, 31, 41.) The personnel director does not evaluate or screen applicants, except to verify that the minimum qualifying credentials are asserted. He merely uses his card file to identify the specified number of applicants whose expressed preferences match the administrator's request. Some preference is given to applicants whose forms have only recently been received or who have recently expressed a current interest in employment.[42] The personnel director then contacts the selected applicants to arrange for their appearance for interviews. (App. 29-30.) One consequence of this procedure is that the personnel director does not necessarily refer for interviews all applicants with the requisite specialties and preferences; he or his secretary merely pulls a certain number of cards, and no separate effort is made to ascertain that every applicant is referred for an interview.

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[42] App. 30. Hazelwood's personnel director testified that the number of applications in recent years is greater than can be handled and, in effect, that the applicants who have more recently shown a new or continuing interest are contacted first because they are more likely to be available. (*Id.*)

Depending on the subject, grade level, and number of positions to be filled, applicants may appear in a group for orientation talks, followed by individual interviews at one or more schools. An applicant may be interviewed by a principal, assistant principal, and department chairman or may meet only with the principal whose school is in need of a new teacher. Each interviewer completes a standardized evaluation sheet on each applicant and makes a recommendation to the coordinator of elementary or secondary education. On occasion, where several administrators have interviewed one or more applicants, the interviewers meet to exchange observations and arrive at a collegial ranking prior to making a final recommendation to the school district's superintendent. (App. 21, 24-25, 39, 46-47, 64.) In practice, the recommendation of the interviewing department chairman or principal is nearly always followed. (App. 46.)

While the assessments made by the various interviewers are necessarily dependent to some degree on their own experience and educational philosophy, there are some general principles applicable throughout the Hazelwood schools. Advanced degrees and lengthy experience are not necessarily favored; all witnesses agreed that a prospective teacher's attitude toward his work and toward pupils is much more important. (App. 22, 26, 27, 51, 68-69, 78-79.) All interviewers look for traits such as quality of expression, manner around children, personal appearance, and voice quality — all reflective of the demands of classroom teaching. (App. 22, 26, 50-51.) Some interviewers ask applicants to resolve hypothetical classroom situations; some discuss educational philosophy and instructional methods. (App. 21.) Some administrators interview applicants alone; others have associates sit in. Their methods vary — as do their personal approaches toward teaching — but they share one goal: the selection of the "best possible" or "best

qualified" teachers for the Hazelwood schools.[43] The interviewing process is indeed "subjective," to the extent that it calls for an assessment of professional qualifications irreducible to forms susceptible of quantitative measurement.[44]

If an administrator does not recommend employing an applicant for the specific position for which he was interviewed, he may still suggest to Hazelwood's personnel director that the application be held for consideration in case other vacancies open in the future. However, if an applicant is neither offered a job nor "held" for possible referral to another interview pursuant to an administrator's recommendation, he is not generally invited back to compete for another vacancy. (See, *e.g.*, App. 49.) Thus, the court of appeals was incorrect in concluding, as it apparently did, that an applicant is in competition for all positions that open after his application is received by Hazelwood. To the contrary, Hazelwood typically affords an applicant no more than one opportunity to impress a principal with his qualifications.

Hazelwood's hiring process, then, involves two discrete steps: (1) selection for interview, and (2) interview, evaluation, and recommendation. The first step involves a "neutral" practice that includes no evaluation of an applicant's qualifications and also operates to permit only

[43]Hazelwood's principals and administrators uniformly testified they sought "the most competent teachers" (App. 18); "the best possible applicant" (App. 21); the "person that can do the job best" (App. 25); "the best candidate for the position" (App. 48); "the most competent person available" (App. 60); "the best qualified person for the position" (App. 65).

[44]The task of interviewing applicants for professional employment draws upon skills acquired by the interviewer during his own career. Moreover, Hazelwood's administrators are not necessarily left to their own instincts in conducting interviews; one principal testified that he had taken college courses and workshop training, the latter conducted by Hazelwood, to develop his skills in interviewing. (App. 66.)

some fraction of applicants to move on to the next step of the process. The second step is not mechanical; the interviewing administrator is called upon to assess those professional qualities that cannot be measured by reading an application form prepared by the applicant. Since in most instances several applicants are interviewed for a single vacancy, the evaluation process also permits interviewers to make comparative judgments in order to select the most qualified applicant.

Neither step in Hazelwood's hiring process by the farthest stretch constitutes a violation of Title VII. The first step — the neutral practice of selection for interview — does not by its nature cause a disproportionate exclusion of black applicants. It is a wholly reasonable device for reducing a flood of applicants to a smaller flow that can be dealt with by administrators.[45] The second step likewise has no inherent tendency to exclude blacks from employment in disproportionate numbers; moreover, it is a legitimate hiring tool used in so many situations with which the Justices of this Court are familiar, including the selection of their own law clerks, that to catalogue them would be pointless. And neither the first step, as applied to 14 applicants identified by the court of appeals, nor the second step, as applied to two others, was shown on this record to have operated in such a way as to make out a prima facie case of discriminatory treatment.

B. Hazelwood Did Not Discriminate in the Selection of Applicants To Be Interviewed.

If the process by which Hazelwood selects applicants for interviews is neutral on its face, *i.e.*, not racially based, as we have just shown, then it can only be violative of Title VII

[45]Hazelwood's coordinator of secondary education testified that "we just haven't got the time to interview all the people that apply." (App. 41.)

if in application it excludes a disproportionate number of blacks. *See Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).[46] There was no showing of such a disparate impact. In fact, the evidence is that black applicants were *not* excluded from interviews in disproportionate numbers.

Hazelwood's personnel director supplies for interview the requested number of applicants whose application forms indicate interest and minimal qualification (*i.e.*, teacher certification) in the appropriate field and grade level. He does so by delving into his card file — favoring only the applicants more recently heard from — until he has pulled the requested number of names for referral. The results of the personnel director's actions demonstrate that black applicants are not excluded from job referrals in disproportionate numbers. The Government presented evidence as to 52 black applicants to whom Hazelwood did not offer employment. (Pl. Ex. 49.) Of these, one (Cotton) applied for a position in special education, which Hazelwood does not provide (Tr. 83-85); three others (Boyd, Catlin, and Ealy) lacked the vocational certificate required for the business education positions they sought (Tr. 49, 55, 64; Pet. App. A 7a, 8a, 15a), and one of those (Ealy) may in any event have been applying for a position already filled (Tr. 321). Of the remaining 48, at least seven were interviewed for positions;[47] another (Thompson) was invited to an in-

[46]Disparate racial impact was only one of the conditions that the *Griggs* Court held would, in combination, constitute a violation of Title VII. In *Griggs* the employment practices involved were not reasonably related to job performance, and the burden of a disparate racial impact fell on the shoulders of employees who were already victims of past, purposeful discrimination by the employer. 401 U.S. at 432. Here neither of those two factors is present.

[47]These were Carson (Pl. Ex. 49), Ellis (Tr. 169), Fletcher (Tr. 216), Kincaid (Tr. 201), Lockett (Tr. 183), Gerald Trotter (Pl. Ex. 49), and Jerome Trotter (Tr. 197-98). This list, based on all the record evidence, varies to some extent from the information set forth in Pl. Ex. 49, which was to that degree incorrect.

terview, but was "unable to attend" (Pl. Ex. 49); and one other (Florez) was invited to attend an interview but had already accepted another position (Tr. 129). In addition, at least 16 other black applicants, including one listed by the Government as an unsuccessful, uninterviewed applicant,[48] were hired for faculty positions, and still another, also listed as an unsuccessful applicant, was in fact offered a job but did not accept.[49] Since an interview was a prerequisite to a job offer, it follows that these 17 were interviewed. Thus, of 65 minimally eligible black applicants, 26 were referred for interviews — a rate of 40 percent.

The record does not show what proportion of applicants generally were interviewed, but there is no reason to think it was significantly different from the 40 percent rate that obtained for blacks. In any event, the burden of establishing any such difference lay with the Government, which was attempting to prove a violation of Title VII, and absence of conclusive evidence on this point means only that the Government failed to carry its burden in this regard.

The court of appeals found prima facie showings of discrimination with respect to 14 applicants who were not interviewed. These applicants were excluded by operation of a process not shown itself to be violative of Title VII. The demonstrated legitimacy of this process, without regard to the specific facts of each case, should control. But if those cases are examined, they do not suggest any impropriety in the practice.

The Government has singled out five of the 16 cases discussed by the court of appeals by designating the record evidence pertaining to them for reproduction in the appendix. Four of these are cases of applicants who were not interviewed. They serve as well as any others to illustrate our point.

[48]Carol A. Jackson (Tr. 32).

[49]Reid (Tr. 186-194).

Cynthia Edmond, whose race would have had to be inferred from her attendance at a college in Georgia that a standard source lists as having a student body predominantly made up of black students, applied for a position as a secondary school social studies teacher. She applied in July 1972 and, according to her testimony, "understood there were no vacancies available" at that time (App. 86), apparently because Hazelwood's receptionist told her "there were approximately five hundred teachers on the waiting list" (App. 85). At Hazelwood's invitation, she renewed her application for 1973-74. (App. 86.) The court of appeals believed that five whites were hired as social studies teachers for 1972-73 "after Edmond was told no vacancies existed." (Pet. App. B 19b.) But the evidence shows that only three persons known to have been interviewed after Edmond applied were hired for that school year; moreover, Edmond did not testify that any Hazelwood officer or employee had told her there were no vacancies in her field. And the court failed to note that, of the nine[50] persons hired for social studies positions in the 1973-74 school year, one was black. (Pl. Ex. 49.)[51]

Robert Howell also applied for a secondary social studies position but only for 1973-74. (App. 338-39.) He was not interviewed, although he had hoped that his experience as a student teacher at Hazelwood in 1971 would work in his favor. Ten other persons were, as the court of appeals observed, hired for secondary social studies positions after Howell applied; however, as in Edmond's case, the court erred in referring to them all as whites (Pet. App. B 17b), since one was black.

[50]Or 10, see the discussion of the applicant Howell, *infra*.

[51]The court of appeals also erred in stating that Edmond's college grade point average in her major was a superior 3.9 on a 4.0 scale (Pet. App. B 19b); in fact, she testified that her average was only 3.3 in her major and 2.9 overall (App. 85). The quality of her academic record was not, in any event, revealed on her application form (App. 330-337), which is all that those who selected applicants for interviews had before them.

Willie Palmer applied for a position as a reading specialist at the elementary level or in junior or senior high school, an administrator or science teacher at the elementary level or a media specialist or "curriculum lab" in junior or senior high school for 1972-73. He ambiguously listed "teacher in elementary grades" on his application form along with "public relations" as among "other positions" desired, *i.e.*, other than "elementary level" or "junior or senior high school." (App. 346-47.) As the court of appeals acknowledged, although Palmer was a man of mature years with a substantial body of experience in both teaching and industry by the time he applied to Hazelwood, he lacked the master's degree required for a science teaching position. (Pet. App. B 24b; App. 91.) He was not interviewed. (App. 87-91.) The court of appeals believed it to be significant that, after Palmer applied, 57 other persons were hired "to teach elementary school or reading during the 1972-73 school year." (Pet. App. B 24b-25b.) But of the 57 successful applicants noted by the court, only three were hired as reading or language arts teachers. The others were elementary grade teachers, and it was surely not irrational for Hazelwood to think it pointless to refer a 43-year-old who according to his application had not been responsible for an elementary classroom for more than 10 years to compete for the job of generally instructing and supervising a first, second, third or even sixth grade class. In fact, only one applicant was hired as a "reading specialist," and she had experience comparable to Palmer's. A language arts teacher was also hired for 1972-73, and she (Gerst) was black. A second language arts teacher was hired for the 1973-74 school year, not the 1972-73 year for which Palmer applied. (Pl. Ex. 49.)

Georgia Shaw applied for a position as an elementary school teacher (grade preferences: 3, 4, 5, 2, 1, 6) for 1973-74. She had received a favorable evaluation of her student teaching experience at Hazelwood. (App. 406-07.) Shaw was not interviewed. She did not testify. As the court of appeals found, several other applicants were hired for elementary positions. (Pet. App. B 21b-22b.)

And that is the sum of it: two black applicants for social studies teaching jobs who were not interviewed for jobs for which at least one other black applicant was interviewed and hired; an experienced teacher, who was not minimally qualified for some of the jobs that he applied for and who professed a willingness to take a $3,000 salary cut to get back into teaching from industry (App. 350), who was not interviewed for the specialized position that he was primarily interested in and for which he was qualified — and which was filled by another black and a white person of comparable experience; and a former student teacher in the District, who had impressed her supervisor in that capacity, who was not interviewed for an elementary classroom teacher's job. The latter case, that of Miss Shaw, may be puzzling on the face of things —one wishes that she had testified — but it is not without more the basis for a finding of discrimination. The other cases do not even puzzle.

None of the cases, those discussed here or the other 10, presents the kind of material on which a finding of employment discrimination could be based, as is confirmed when the nature of the findings made by the court of appeals as to Hazelwood's hiring process is considered. The court of appeals' criticism was of lack of standards for hiring, of "an unstructured decentralized hiring process in which subjective criteria predominate in evaluating candidates," of "subjectively-based selection procedures" and of "the use of vague and subjective criteria." (Pet. App. B 12b-14b.) To the extent that there is any validity to that body of criticism, it applies only to the interviewing stage of the hiring process. It has nothing to do with the selection of applicants for interviews, which is where 14 of the court of appeals' 16 applicants lost out. Nothing in the general description of the interview-selection process or in the cases of four, 14 or 37 blacks who were not selected for interviews (in a period in which 26 blacks were selected) suggests or even hints anything remotely like administration of a

system "fair on its face and impartial in appearance . . . with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances," *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

On a more technical level, it cannot be said that the 14 applicants not selected for interviews satisfied the requirements of *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802 (1973), as the court of appeals said that they did (Pet. App. B 15b-16b). The Court said in *McDonnell Douglas* that an individual complainant in a Title VII trial can make a prima facie case by showing:

> "(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."

None of the 14 black applicants can be held as a matter of law to be "qualified" for employment by Hazelwood, as that term is used in the *McDonnell Douglas* rule. None of the 14 has met personally with a Hazelwood school principal, and none has been evaluated in an interview situation or compared to other available job applicants. Unless teachers are to be hired strictly on the basis of their own self-serving recitations as set forth in their written applications, the court of appeals' 14 uninterviewed applicants cannot be said to be "qualified" for employment.

This failure of proof is accentuated by the nature of the relief ordered by the court of appeals with respect to these 14. Hazelwood is required, *inter alia*, to offer the next available positions to these applicants, persons whose educational philosophy, response to classroom situations, attitude toward children, quality of speech, and personal

appearance have never been measured. Moreover, while applicants who are interviewed are evaluated in competition with others, the court of appeals has held these 14 to possess such merit that they should be spared that competitive process in which only a minority of applicants triumph.[52] The lower court's examination of the paper credentials of each applicant — with its express emphasis on advanced degrees and years of experience, criteria that are not in themselves favored by Hazelwood — emphasizes the error of the court's attempt to substitute its judgment for the school district's in weighing the qualifications of teachers.

C. Hazelwood Did Not Discriminate in the Selection of New Employees from among Those Applicants Who Were Interviewed.

The second step in Hazelwood's hiring process — interviewing applicants and selecting from among those interviewed the ones to whom job offers will be made — does not result in the exclusion from employment of a disproportionate number of blacks; for that reason, if for no other, it is not an employment practice prohibited by Title VII. But the practice would survive even a showing of disparate effect — not made in the present case — because it is a legitimate, job-related employment tool.

The Government presented no evidence as to the number of applicants who are actually interviewed by Hazelwood and similarly presented no evidence as to the relative success rates of blacks and non-blacks who encounter this phase of Hazelwood's hiring process. Since the burden of

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[52] James Washington, one of the 14, testified that he applied to seven or eight school districts in St. Louis County but for several months could find work only as a substitute teacher. (Tr. 123-25.) The court of appeals gave no reason why Washington should be held qualified to teach at Hazelwood when he was rejected nearly everywhere else.

proving a disproportionate exclusion of blacks lies with the party alleging a violation of Title VII, it is apparent that the Government failed to sustain its burden in this respect. The evidence does show, however, that of 24 black applicants known to have been interviewed, 17 received job offers[53] — a rate of 70.8 percent. Although the record does not provide a basis for comparing this rate directly with the rate for non-black applicants, an estimate as to that rate may be inferred from the evidence that — where a sufficient number of eligible applicants are available — several applicants may be interviewed for each vacancy. Whatever the precise statistics, there is obviously no reason to believe that blacks are excluded in disproportionate numbers by the interview-and-evaluation process. To the contrary, blacks have fared exceptionally well in their competition with other applicants.

Although the court of appeals scorned Hazelwood's hiring practice as "standardless" and — because of its "subjective" nature — susceptible of discriminatory application, the fact is that Hazelwood seeks the "best qualified" teachers. The school principals and other administrators who interview job applicants and make the crucial recommendations for employment, far from treating this standard as a license to exercise personal whim, devote considerable effort to the interview-and-evaluation process. They are, after all, professional educators, whose objective is not the conduct of an industrial assembly line or the management of an unskilled labor force, but rather the education of children.

The court of appeals overlooked the professional nature of the employment involved here. Unlike Green in *Mc-*

[53] See pp. 67-68, *supra*. Another applicant who was interviewed (Catlin) turned out to lack minimum certification for the job she sought (see p. 67, *supra*) and is therefore excluded in this computation.

Donnell Douglas Corp. v. *Green*, 411 U.S. 792 (1973) — a former employee whose qualifications to perform his job were not in dispute — and unlike the rejected applicants in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) — who were barred by a sweeping employment practice from even demonstrating their abilities to perform the jobs in question — an applicant who interviews for a Hazelwood job cannot be said to be "qualified" to teach in a Hazelwood school simply on the basis of the representations he has made on his application form. Although the court of appeals indicated that it would accord recognition to "objective" standards used in the hiring of teachers, the court did not suggest where in the education profession there might be found "objective" measures of an applicant's attitude toward children, quality of speech, poise, and even personal appearance — qualities that are highly relevant to the hiring of teachers and that can only be evaluated by means of interviews.

Moreover, the teaching profession, like other professions, displays a variety of philosophies concerning, and approaches toward, the accomplishment of the basic educational task at hand. It is a school's principal who is supervisor of the instructional activities at the school (*e.g.*, App. 63); and it is legitimately within the principal's area of responsibility to select his school's teachers by means that expose and consider the issue whether an applicant's views on crucial matters of educational philosophy are compatible with his.

The court below some years ago commented on the inherent subjectivity of the process by which the qualifications of teachers must be judged:

> "We recognize that teaching is an art and that excellence does not depend upon knowledge, experience, formal training and classroom conduct alone. Fitness for teaching rests upon a broad range of factors and

encompasses numerous personality and character traits. In addition, the particular needs of a school district may at times genuinely require that weight indeed be given to an applicant's ability to teach more than one subject, or, in addition to teaching, to supervise extracurricular activity. Nothing contained in this opinion is intended to be restrictive of a school board's freedom to make full inquiry and to give full consideration to an applicant's qualifications and the district's needs in filling vacancies so long as the board does not act unreasonably, arbitrarily, capriciously, or unlawfully." *Smith* v. *Board of Education of Morrilton School District No. 32*, 365 F.2d 770, 781-82 (8th Cir. 1966) (Blackmun, J.) (citations omitted). *Accord*, *Chance* v. *Board of Examiners*, 330 F. Supp. 203, 214 (S.D.N.Y. 1971), *aff'd*, 458 F.2d 1167 (2d. Cir. 1972).

The issue, then, is not whether the underlying criteria are judgmental; it is whether those criteria are fairly applied.

The lower courts have not often considered how, in Title VII cases involving the employment of professionals, the necessary resort to standards not easily reduced to objective measurement is to be judged. That issue will not always be addressed in such cases since an employer is not required to establish the job-relatedness of his practices until the challenging party has established that those practices produce an adverse disparate impact on a protected minority. But where the issue has been considered, recognition has been given to the difference between the employment of professionals and the hiring of less skilled labor. In *Coopersmith* v. *Roudebush*, 517 F.2d 818 (D.C. Cir. 1975), for example, the court considered a Title VII sex discrimination challenge to two practices used by a federal employer in the hiring of attorneys: a preference for applicants with recent legal experience, and the evaluation of the applicant's written response to a "test problem" designed to simulate one of the tasks performed by at-

torneys in the jobs in question. Adopting the position urged by the United States, the court found the rejected applicant had not established that the use of either of these practices operated to exclude women disproportionately from employment and then went further, deliberately upholding both the recent-experience requirement and the use of a test problem as job-related even though an evaluation of the quality of an applicant's experience and response to a test problem necessarily depends on the "subjective" judgment of the persons who select new employees.

It is clear that the process by which Hazelwood evaluates the job applicants it interviews has not worked to the disadvantage of blacks. The inquiry, we contend, should stop there. But we shall examine the case of the one of two individual interviewed applicants, as to whom the court of appeals found a prima facie showing of discrimination, that the Government has selected for the appendix. For that case, far from serving as a specific example of discrimination, illustrates the Government's failure to prove discriminatory conduct by Hazelwood.

Timotheus Carson applied for a position teaching secondary English, French, or German for the 1972-73 school year. (App. 309-10.) He was interviewed for a position teaching English at the senior high school. Although the court of appeals stated that Carson was rated "very highly" by his interviewer (Pet. App. B 21b), in fact the ratings entered on Carson's interview sheet were only average or slightly above (App. 317-18). Although the court of appeals thought that 23 persons were hired "in Carson's field" after he applied (*id.*), the Government's evidence showed only that seven persons who were interviewed after Carson applied were hired for senior high school English positions through the end of 1972 (Pl. Ex. 49). The court of appeals apparently considered Carson's 10 years of experience and master's degree as showing his fitness for employment, disregarding the evidence that established that neither ex-

perience nor an advanced degree is necessarily favored by Hazelwood.[54]

Carson's case proves nothing. Some others who were interviewed about the same time as he was for high school English teaching jobs impressed their interviewer more than he. That is all. No inference can fairly be drawn that he suffered in the interview process from being black.[55]

CONCLUSION

The judgment of the court of appeals should be reversed. If the Court accepts our constitutional argument, the case should be remanded with instructions to reinstate the district court's original judgment for defendants on the ground that what the Constitution requires to be proved to warrant the imposition of Title VII sanctions on the Hazelwood School District was not proved. If the Court does not agree with us on that point, the case should be remanded for reconsideration of the alleged individual cases of discrimination by a court disabused of the erroneous notion that statistics showed Hazelwood engaging in a pattern or practice of discrimination against

[54]In the process of substituting its judgment for that of Hazelwood's administrators, the court of appeals also erred in evaluating the record of Ellis, the other applicant who was interviewed but rejected as to whom it found discrimination. The court thought that Ellis had "seven years of teaching experience" (Pet. App. B 20b), but in fact she had taught for only one year after receiving her teaching degree (Pl. Ex. 12). Moreover, the two principals who interviewed Ellis testified that she had not been the best qualified applicant for the positions for which she was considered. (App. 13, 78.)

[55]Although Carson was present at trial, he did not testify. (Pet. App. A 16a.)

black applicants for teaching positions. There has been no such showing.

Respectfully submitted,

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February 1977

Supreme Court, U. S.
FILED
APR 15 1977
MICHAEL RODAK, JR., CLERK

No. 76-255

In the Supreme Court of the United States

OCTOBER TERM, 1976

HAZELWOOD SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1b-32b) is reported at 534 F.2d 805. The opinion of the district court (Pet. App. 1a-26a) is reported at 392 F. Supp. 1276.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 1976 (Pet. App. 1c), and a timely petition for rehearing was denied on May 25, 1976 (Pet. App. 1d). The petition for a writ of certiorari was filed on August 20, 1976, and was granted on January 10, 1977. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals properly ruled that petitioners failed to rebut a *prima facie* case of employment discrimination that was based upon statistical data, a history of racial discrimination, the absence of articulated hiring standards and evidence of individual discriminatory acts.

2. Whether Title VII of the Civil Rights Act of 1964 is unconstitutional as applied to state and local governments.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the United States Constitution and of Title VII of the Civil Rights Act of 1964 are set forth in the petition for a writ of certiorari (Pet. 2-3), and petitioners' brief (Pet. Br. 2-3).

STATEMENT

On August 9, 1973, the United States brought suit under Title VII of the Civil Rights Act of 1964, 78 Stat. 253 *et seq.*, as amended, 42 U.S.C. (and Supp. V) 2000e *et seq.*, and the Fourteenth Amendment to the Constitution, charging racial discrimination in the employment practices of petitioners Hazelwood School District ("the District"), the Superintendent of Schools, and the members of the Hazelwood Board of Education (A. 2-6).[1] The United States alleged that

[1] Jurisdiction was invoked under Section 707 of the Civil Rights Act of 1964, 78 Stat. 261-262, as amended, 42 U.S.C. (and Supp. V) 2000e-6.

the District had engaged in a pattern or practice of racial discrimination in failing to employ black applicants who were as well or better qualified to teach than whites who were hired instead, and in its recruiting practices and selection procedures—all of which perpetuated the effects of past discrimination (A. 3-4). The United States sought an injunction to require the District to cease discriminatory practices, to take affirmative action to obtain black faculty and to make offers of employment and back pay to black persons who were discriminatorily rejected (A. 5).

The Hazelwood School District occupies 78 square miles of northern St. Louis County, Missouri (Pet. App. 2a, 3b). In terms of student population, it is the fourth largest school district in the state.[2] In the 1972-73 school year, the District operated 23 schools, enrolling 25,166 students (Pet. App. 3a, 3b). In the 1973-74 school year, the District employed a total of 1,231 teachers (Pet. App. 3a, 4b). At trial, the United States presented evidence to show that the Hazelwood School District had engaged in a continuing practice of discrimination in the recruitment and hiring of these teachers.

Prior to this Court's decision in *Brown* v. *Board of*

[2] *Directory of Public Elementary and Secondary Schools in Selected Districts*, U. S. Department of Health, Education, and Welfare, Office of Civil Rights, pp. 746-786 (1972). The District was formed between 1949 and 1951 from 13 rural school districts (Pet. App. 2a) and serves Hazelwood, Black Jack, Cross Keyes, Shoveltown, Spanish Lake and other communities in northern St. Louis County. The District borders for a short distance on the St. Louis City School District (Pet. App. 3b). The residents of the District are predominantly white (Pet. App. 2a-3a, 3b).

Education, 347 U.S. 483, the Constitution of the State of Missouri mandated racially segregated schools (Pet. App. 17a, 3b). School districts in St. Louis County assigned black faculty exclusively to blacks schools and white faculty to white schools (A. 414-426; Pet. App. 3b).[3] Since no blacks lived in the Hazelwood District prior to 1954, the District did not either operate a black school or employ black faculty (Pet. App. 2a, 3b; A. 423, 426). Beginning in 1954, a small number of blacks began to move into the District (Pet. App. 2a),[4] and some time prior to 1964 the school board adopted a formal policy "to hire all teachers on the basis of training, preparation and recommendations, regardless of race, color or creed" (Pet. App. 3b-4b).

Nevertheless, the District's teacher recruitment and selection policies continued to reflect the influence of racial criteria. As late as 1962-63, some teacher application forms requiring racial identification were still in use (Pet. App. 4a, 3b), and in 1962 the District placed an employment advertisement in the *Clarion-Ledger Jackson Daily News* in Jackson, Mississippi, requesting

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[3] See also *United States* v. *State of Missouri*, 363 F. Supp. 739, 743-745 (E.D. Mo.), in which the district court discusses the racially segregative employment practices of other school districts in St. Louis County.

[4] The school board minutes for November 20, 1954, state (A. 428):

> Superintendent Kirby informed the Board of property in the District that had been rented to persons of the Negro race, but stated he had no knowledge as to whether they had children of school age. After deliberation the Superintendent was instructed to admit resident negro children, but in view of their being so decidedly in the minority, he was further instructed to offer payment of tuition to negro pupils to a school of more predominantly negro enrollments • • •.

"white only" applicants for kindergarten and elementary school teaching positions (Pet. App. 3b; A. 71). Although the District personnel director engaged in extensive recruiting of teacher applicants at colleges and universities throughout Missouri, Illinois, Arkansas, Kansas, and Oklahoma (Pet. App. 3a, 4b), the District did not recruit at either of the two predominantly black four-year colleges in Missouri—Harris Teachers College and Lincoln University—or at any other predominantly black school (Pet. App. 3a-4a, 4b). The former superintendent of schools stated on deposition that he never recruited at Lincoln University because "[i]n the early years of my superintendency that was a Negro university" (A. 55). This racially selective recruiting pattern apparently continued to the date of trial.[5]

Selection of teachers from those who do apply for positions in the District involves a virtually standardless process (Pet. App. 12b). When a vacancy occurs, the director of the personnel office selects applicants in the field of the vacancy for interviews (Pet. App. 4b).[6] The District did not offer evidence of any official policy

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[5] See Hord Deposition 6-7, 9-10, 23-26; Defendants' Response to Plaintiff's Request for Admissions, No. 46, filed October 1, 1973.

[6] Applicants for teaching positions in the District are required to complete an application form, which is kept on file in the District's personnel office (Pet. App. 4b). Applications are kept in an "active" file in alphabetical order (McDonald Deposition 29). Each fall the District asks all applicants to update their files; any which are not updated are destroyed (Pet. App. 4a, 4b). As long as an applicant's file is active he or she is eligible for consideration for vacancies in his or her field (Hord Deposition 15-16). A candidate must file a written application in order to be interviewed, and must be interviewed in order to be hired (Hord Deposition 18-19).

that would indicate the basis upon which particular applicants were chosen for interviews. Some testimony indicated that priority is given to those applicants who have most recently come to the attention of the personnel office or who have otherwise notified the office of their continuing availability (Pet. App. 5b-6b).[7] The adverse experience of black applicants suggested that even these "policies" were not, however, applied uniformly.[8]

Chosen applicants are interviewed by the school principals and the department chairmen (Pet. App. 6b-7b). In practice the principal's recommendation is almost

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[7] The personnel office does not make substantive decisions regarding the qualifications of applicants in the course of this selection, beyond checking to determine whether the applicant has, or is eligible for, Missouri certification (Pet. App. 4a-5a, 5b).

[8] A number of black applicants were not interviewed even though their applications were more recent than those of whites who were interviewed and hired. For example, Delores Penton applied for a teaching position in grades K-5 in an application received by the District on June 26, 1973 (Pl. Ex. 68). Between June 27, 1973, and October 18, 1973, the District hired five whites who had applied before Mrs. Penton for positions Mrs. Penton had sought (Pl. Ex. 2, Vol. III, pp. 198-220; Vol. V, pp. 134-142; Vol. VI, pp. 280-287; Vol. VII, pp. 81-88, 349-356). One applicant had applied as early as December 6, 1972 (Pl. Ex. 2, Vol. V, pp. 134-142). Alexis Smith applied for a position teaching at the elementary level in an application received by the District on April 21, 1972 (Pet. App. 22b). The court of appeals found that twenty-five white teachers were hired as elementary teachers for the 1972-73 school year, many of whom had applied much earlier than Ms. Smith (see, *e.g.*, Pl. Ex. 2, Vol. VI, pp. 59-67; Vol. VII, pp. 151-158, 483-495; Vol. VIII, pp. 201-209; 425-434; Vol. IX, pp. 43-50; Vol. X, pp. 23-31, 32-40; A. 230-244). Other black applicants failed to receive interviews in spite of persistent efforts to reemphasize their availability. See testimony of Derek Novel (Tr. 158-159), Cynthia Edmond (A. 85-86), and Delores Penton (Tr. 179).

always adhered to (*ibid.*). The only guidance given to the principals is a general instruction to "hire the 'most competent' person available" for the position to be filled (Pet. App. 7b; A. 60-61). "In Hazelwood * * * each principal is vested with almost total discretion in hiring teachers for his school" (Pet. App. 12b).[9]

Statistical evidence introduced by the United States indicated that these recruiting patterns and hiring procedures operated to exclude black applicants from employment. In 1970 more than 12 percent of all elementary and secondary teachers in the St. Louis Standard Metropolitan Statistical Area and more than 15 percent of such teachers in St. Louis City and County were black (Pl. Ex. 53, pp. 27-303, 27-331; Pet. App. 18a, 4b). By contrast the District hired no black teacher until 1969 (Pet. App. 3a, 4b), and employed only six blacks (.6 percent of the teachers in the District) in 1970-71 (Pet. App. 3a, 4b). The District hired 234 new teachers in 1971-72, and 282 in 1972-73 (Pet. App. 7b). Yet in 1972-73, 13 blacks were employed out of a total of 1,107 teachers (1.2 percent) (Pet. App. 3a). And for the 1973-74 school year the District employed 22 black teachers out of a total of 1,231 (1.8 percent) (Pet. App. 3a, 4b).[10]

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[9] The District gives preference in hiring to applicants who have successfully performed student teaching there (Pet. App. 6a, 17b-18b). However, Robert Howell and Georgia Shaw, two black applicants who successfully completed student teaching at Hazelwood, were not granted interviews (see pp. 59-61, *infra*).

[10] At the time the District was notified that the United States was considering filing a Title VII suit against it (October 27, 1972, see Pl. Ex. 58), Hazelwood employed a total of 10 black teachers. See Plaintiff's Request for Admissions, Appendix A, filed on August 23, 1973; Defendants' Answer to Plaintiff's Interrogatories, Exhibit

To support the *prima facie* showing that included a history of pre-Act racial discrimination, current standardless procedures and a continuing statistical pattern of disproportionate employment, the United States introduced evidence that more than fifty black applicants had been rejected for employment between 1970 and 1973 and that subsequent to each black's application, vacancies in the applicant's field were filled by whites who were not as well qualified, or were no better qualified (Pet. App. 4b).

The United States claimed that the combination of a history of discrimination, statistical disparities in hiring, standardless hiring procedures and the instances of individual discrimination constituted a *prima facie* case of a pattern and practice of employment discrimination in violation of Title VII. Nevertheless, the District introduced very little evidence to rebut the *prima facie* case. As summarized by the court of appeals (Pet. App. 7b):

> * * * Hazelwood relied almost entirely upon its cross-examination of the Government's witnesses. Hazelwood introduced only one witness and several exhibits of its own. The witness testified to the total number of teachers who applied and were hired during the 1971-72 and [1972-73] school years—3,127 of which 234 were hired in 1971-72 and 2,373 of which 282 were hired in 1972-73. The exhibits consisted of the policy manual, policy book, staff handbook, and

2, filed on October 1, 1973. Thus, more than half of all of the blacks employed by Hazelwood at the time of trial (22) had been hired after the District was aware that its hiring practices were under scrutiny.

> historical summary of the formation of the Hazelwood School District.

Hazelwood argued that the court could not make a finding of discrimination because equal employment opportunity was the official policy of the District and because the small number of its black teachers was comparable to the proportion of black students enrolled in Hazelwood's schools.

After trial, the district court held that the United States failed to prove that petitioners had engaged in racially discriminatory hiring practices (Pet. App. 23a, 25a). The court found that the United States had not demonstrated a statistical disparity sufficient to constitute a *prima facie* showing of discrimination, because less than two percent of the children in the Hazelwood District schools are black (Pet. App. 19a). The court also held that there was no basis in the record for concluding that the District acted in a discriminatory fashion in failing to hire those rejected black applicants identified by the United States (Pet. App. 23a-25a).

The court of appeals reversed. Rejecting the district court's analysis of the statistical evidence, the court of appeals stated that "[t]he level of black student enrollment in Hazelwood school[s] sheds no light whatsoever upon the dispute before us" (Pet. App. 11b). The relevant consideration was the demonstrated statistical disparity "between the proportion of blacks in the employer's workforce and the proportion of blacks in the labor market" (Pet. App. 11b). The court also held that the finding of nondiscrimination with regard to 16 of the rejected black applicants was clearly erroneous

since the United States "established a *prima facie* case of discrimination which was not rebutted by Hazelwood" (Pet. App. 17b). Finally, the court ruled that the evidence adduced at trial demonstrating a statistical disparity between the racial composition of Hazelwood's work force and the labor market, the use of standardless hiring procedures, the history of discrimination in hiring, and the evidence that 16 teacher applicants were discriminatorily rejected was sufficient to establish a *prima facie* case of a pattern and practice of racial discrimination—a showing that petitioners did not rebut. "We have concluded that, from its establishment in 1949-1951 until at least March 1974, Hazelwood has engaged in a pattern or practice of discriminatorily failing and refusing to hire blacks in violation of the Act" (Pet. App. 3b).

The court of appeals ordered both injunctive and compensatory relief. Hazelwood was permanently enjoined from discriminating in the hiring of teachers on account of race or color (Pet. App. 26b) and ordered to promulgate accurate job descriptions and hiring criteria, to recruit on an equal basis (Pet. App. 26b-27b), and to place the 16 discriminatorily rejected black applicants on a "preferred hiring list" (*id.* at 27b). The court of appeals directed the district court to award back pay to two rejected applicants and to determine whether back pay should be awarded to the other 14 applicants (*ibid.*).[11]

[11] One judge dissented, on the grounds that the evidence of discrimination was inconclusive, the majority's rationale created a preference for black applicants, and the remedial order was overly broad (Pet. App. 28b-32b). The petition for a writ of certiorari filed in this Court, however, presents no question concerning the scope of the remedial order.

SUMMARY OF ARGUMENT

I.

The court of appeals determined that a history of discriminatory teacher recruiting practices, a substantial statistical disparity in black teacher employment, the presence of an arbitrary hiring process, and specific acts of discrimination against 16 individual black applicants for teaching positions, together established a *prima facie* case of a pattern and practice of employment discrimination. Petitioners offered almost no rebuttal evidence in the district court (Pet. App. 7b), and the court of appeals correctly held that petitioners' failure to rebut the government's *prima facie* case warranted a finding of discrimination in violation of Title VII.

The court of appeals properly concluded that evidence of an uninterrupted history of discrimination against black teacher applicants supported the inference of a pattern and practice of discrimination. Prior to this Court's decision in *Brown* v. *Board of Education,* 347 U.S. 483, Hazelwood together with all other school districts in Missouri was required by state law to maintain a segregated school system. Although segregation was officially ended in 1954, no black teacher was hired until 1969. Hazelwood's application forms and advertising continued to utilize racial criteria during the early 1960s. Although Hazelwood recruited for teachers at predominantly white colleges, "Hazelwood officials have never recruited from any predominantly black college" (Pet. App. 9b). This continuing history of racial discrimination was relevant to show that present policies "perpetuate past discriminatory practices"

(Pet. App. 9b). *United States* v. *Jacksonville Terminal Co.*, 451 F.2d 418 (C.A. 5); *United States* v. *Sheet Metal Workers, Local 36*, 416 F.2d 123 (C.A. 8).

The court of appeals also relied upon a statistical showing that in 1970 approximately 15 percent of the teachers in St. Louis City and County were black, while the percentage of black teachers at Hazelwood ranged between 0 in 1969 and 1.8 percent in 1973-74. More than half of this black teacher population was hired after the District was informed that its hiring practices were under scrutiny. Cf. *Jenkins* v. *United Gas Corp.*, 400 F.2d 28, 33 (C.A. 5). Petitioners now claim that the recruiting practices of St. Louis City schools deprive Hazelwood of black applicants, but no evidence to that effect was offered in the district court. Indeed, the record demonstrates that St. Louis City schools are a major source of Hazelwood's black applicants, that other suburban schools have had no difficulty in maintaining a more representative black faculty, and that even if St. Louis City is removed from the data base, there remains a significant disparity between Hazelwood's black work force and that of the other districts in the county. Petitioners argue that applicant success rates are better evidence of discrimination. But reliable applicant statistics are not available, and any applicant data would reflect Hazelwood's present and past racially selective recruiting, and its reputation for discrimination. Finally, there is no error in using employment statistics that reflect both past and present teacher selection decisions since past employment actions may shed light on present policies that may violate Title VII. *Buckner* v. *Goodyear Tire and Rubber Company*, 339 F. Supp. 1108 (N.D. Ala.), affirmed, 476 F.2d 1287

(C.A. 5); cf. *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*, No. 75-616, decided January 11, 1977, slip op. 14.

Adding to the inference from the history of discrimination and the statistical disparity was evidence that Hazelwood's hiring practices were arbitrary. Although the record demonstrated that the absence of either objective or subjective standards had resulted in a disproportionately white faculty, petitioners failed to introduce evidence to prove that the procedures were not utilized in a discriminatory fashion. In the absence of any explanation from the District "race is the only identifiable factor explaining the disparity." *Brown* v. *Gaston County Dyeing Machine Co.*, 457 F.2d 1377, 1382 (C.A. 4), certiorari denied, 409 U.S. 982.

The final element supporting the decision that a *prima facie* case had been established was the individual findings of discrimination against 16 black applicants. In each case, the court of appeals applied the four-pronged test of *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802. In each case, petitioners failed to introduce any rebuttal evidence to demonstrate that in fact the failure to interview or hire these applicants was not the result of racial discrimination. Independently of any statistical showing, the court of appeals found discrimination in these individual cases because of the failure to rebut the *prima facie* demonstration as to each applicant.

Thus, on the basis of a cumulative inference properly derived from the history, statistics, hiring practices, and individual showings of discrimination introduced into evidence, the court of appeals held that a *prima facie* case of a pattern and practice of discrimination

had been shown. "Hazelwood offered no evidence adequate to rebut the inference of discrimination" (Pet. App. 15b). Petitioners' post-trial efforts to assert possible explanations for the *prima facie* showing are without evidentiary support, and in any event are unpersuasive.

II

Petitioners assert that the application of Title VII to unintentional discrimination by state and local governments exceeds Congress' power under the Commerce Clause and Section 5 of the Fourteenth Amendment. The premise underlying petitioners' argument—that the court of appeals made no determination of purposeful racial discrimination—is erroneous. The government's announced intention was to prove that the employment discrimination was the result of purpose, and although the court of appeals did not use the words "purposeful" or "intentional" it determined whether the black applicants were rejected "because of" or "on account of" race (Pet. App. 17b-25b). The evidence established intentional discrimination in pre-Act hiring of teachers on the basis of race, and that recruitment of teacher applicants was, and continued to be, deliberately carried out on a racially discriminatory basis. After examining Hazelwood's standardless hiring procedures the court of appeals concluded that "[i]n our view, it is more than mere coincidence that the use of [Hazelwood's hiring] procedures produced only a few black teachers" (Pet. App. 12b). In addition the court found specific "evidence of actual discriminatory practices * * * in the rejection of some 16 black applicants" (Pet. App. 14b).

The court of appeals' use of historical and statistical evidence of racial impact as well as instances of individual discrimination thus was a proper "inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights* v. *Metropolitan Housing Development Corp., supra,* slip op. 13. And the court's decision involves only the congressional allocation of proof burdens under Title VII in a case where there was direct evidence of intentional discrimination, and does not involve any substantive expansion of the constitutional prohibition in the Fourteenth Amendment. Cf. *South Carolina* v. *Katzenbach,* 383 U.S. 361; *Georgia* v. *United States,* 411 U.S. 526; *Beer* v. *United States,* 425 U.S. 130.

The application of Title VII to prohibit discrimination by a public employer is a proper exercise of congressional power. In enacting the 1972 amendments applying Title VII to the states, Congress exercised its authority under both the Commerce Clause and Section 5 of the Fourteenth Amendment. The legislative history reflects a determination that "[l]egislation to implement this aspect of the Fourteenth Amendment was long overdue." H.R. Rep. No. 92-238, 92d Cong., 1st Sess., pp. 18-19 (1971). Remedial legislation of this kind, although it may intrude into "spheres of autonomy previously reserved to the States," has been consistently sanctioned as an appropriate exercise of Congress' power under the post-Civil War amendments. *Fitzpatrick* v. *Bitzer,* 427 U.S. 445, 455.

Title VII can also be independently sustained under the commerce power because its implementation of the Fourteenth Amendment commands does not interfere with any attribute of state sovereignty constitutionally

insulated from the congressional exercise of the commerce power. See *Usery* v. *Allegheny County Institution District,* 544 F.2d 148 (C.A. 3), certiorari denied, No. 76-1010, March 28, 1977. The mandate not to discriminate on the basis of race does not interfere with the discretion of state and local governments in determining the number of employees hired, their functions, hours or wages, and compliance with Title VII costs the state nothing. Cf. *National League of Cities* v. *Usery,* 426 U.S. 833.

ARGUMENT

I

THE COURT OF APPEALS PROPERLY RULED THAT PETITIONERS FAILED TO REBUT A *PRIMA FACIE* CASE OF EMPLOYMENT DISCRIMINATION THAT WAS BASED UPON STATISTICAL DATA, A HISTORY OF RACIAL DISCRIMINATION, THE ABSENCE OF ARTICULATED HIRING STANDARDS, AND EVIDENCE OF INDIVIDUAL ACTS OF DISCRIMINATION

The court of appeals explained that a combination of four factors led it to conclude that the United States had established a *prima facie* case that petitioners had engaged in a pattern and practice of discrimination in violation of Title VII of the Civil Rights Act of 1964 (Pet. App. 8b; footnotes omitted):

Evidence was adduced at trial demonstrating (1) a

history of discriminatory practices in the hiring of teachers by Hazelwood prior to the effective date of Title VII, (2) a statistical disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the labor market, (3) an unstructured decentralized hiring process in which subjective criteria predominate in evaluating candidates, and (4) specific discrimination against 16 black applicants for teaching positions at Hazelwood. After considering this evidence, we conclude that a *prima facie* case of discrimination was made out by the Government.

Having failed in the district court to introduce evidence to rebut the inference arising from these four separate evidentiary showings, petitioners attempt to relitigate those issues here. Petitioners misconceive the role of a reviewing court in a Title VII case, and its tardy response in this Court to the *prima facie* showing of discrimination is largely based upon assertions that are either unsupported in the record or demonstrably in error.

A. THE EVIDENCE SHOWED AN UNINTERRUPTED HISTORY OF DISCRIMINATION AGAINST BLACKS IN PETITIONERS' HIRING OF TEACHERS

Although statutorily mandated segregation officially ended in 1954, with this Court's decision in *Brown* v. *Board of Education,* 347 U.S. 483, the record here indicates that Hazelwood continued to discriminate against blacks in staffing the Hazelwood District

schools.[12] Indeed, Hazelwood employed no black teachers during nearly the first twenty years of its existence. Although the District adopted sometime prior to 1964 a formal policy "to hire all teachers on the basis of training, preparation and recommendations, regardless of race, color or creed," no black was hired until 1969 (Pet. App. 3a, 3b-4b). As the Fifth Circuit has noted, nothing is more emphatic than zero. *United States* v. *Hinds County School Board,* 417 F.2d 852, 858.

This exclusion of black teachers apparently was no accident. Some teacher application forms continued to require a racial designation as late as the 1962-63 school year.[13] In 1962, the District placed an advertisement in the Jackson, Mississippi, *Clarion-Ledger* announcing that "Kindergarten and Elementary teachers (white only)" were needed in the District (A. 71).[14] Finally,

[12] Petitioners claim that there is not "any 'historical background' of racially motivated discrimination at Hazelwood. • • • The doors of Hazelwood's schools are and have been open to blacks—teachers as well as students" (Pet. Br. 29). This is contrary to the court of appeals' findings, and, indeed, petitioners acknowledge elsewhere that prior to 1954 "only white teachers were allowed to teach in schools with white students and only black teachers in schools with black students" in public schools throughout Missouri (Pet. Br. 7).

[13] It was not disputed in the courts below that Hazelwood used such forms until 1962-63 (cf. Pet. Br. 11, 59). Both courts so found (Pet. App. 4a, 3b) based upon defendants' answer to plaintiff's interrogatories (Answer to Interrogatories of February 4, 1974, No. 12). Samples of Hazelwood application forms containing spaces for racial designation are contained in Plaintiff's Exhibit 62.

[14] Petitioners argue that the "white only" phrase "may or may not have been in the School District's copy as submitted" (Pet. Br. 10). The court of appeals specifically found that "Hazelwood placed" the advertisement (Pet. App. 9b). Petitioner does not

although the Hazelwood School District has recruited teacher applicants at predominantly white colleges and universities throughout a five-state area, Hazelwood never engaged in such recruiting efforts at the two predominantly black teacher training colleges in Missouri.[15] Indeed, the court of appeals noted (Pet. App. 9b): "Hazelwood officials have never recruited from any predominantly black college."

The history of pre-1954 *de jure* discrimination, the failure to hire blacks in any numbers prior to 1971 and the unrebutted evidence that recruiting continued to be influenced by racial criteria support an inference of discrimination. As the court of appeals stated, "[the

contend that this finding is clearly erroneous, and, indeed, it is supported by the record. The present superintendent of schools testified that the advertisement "was placed by the superintendent's office" (A. 62), and there was uncontroverted testimony by employees of the *Clarion-Ledger* that the newspaper printed advertisements in exactly the form received (A. 69-70, 75-76).

[15] Petitioners attempt to minimize this failure to recruit on an equal basis by characterizing it as a failure to engage in "affirmative action" (Pet. Br. 29) and by suggesting that such recruitment would have been fruitless in any event because "there was little interest in all-white Hazelwood among black students who foresaw a seller's market for their services" (Pet. Br. 11). No evidence supports this assertion. Since there was a seller's market for the services of both white and black teachers, the logical response would have been for Hazelwood to recruit wherever qualified teachers could be found. In light of testimony by the former superintendent that teachers were not recruited at Lincoln University because it was "a Negro university" (p. 5, *supra*) and the District's extensive recruiting efforts elsewhere, Hazelwood's actions in this regard reflect more than a mere failure to engage in "affirmative action." Moreover, the fact that there was a seller's market for teachers in the early sixties does not explain why Hazelwood continued to recruit only at predominantly white schools when a buyer's market existed.

history of discrimination] is highly relevant to show that present policies or practices, which appear neutral on their face, perpetuate past discriminatory practices" (Pet. App. 9b). *United States* v. *Jacksonville Terminal Co.*, 451 F.2d 418 (C.A. 5); *United States* v. *Sheet Metal Workers, Local 36*, 416 F.2d 123 (C.A. 8).

B. THE UNEXPLAINED STATISTICAL DISPARITY BETWEEN THE PARTICIPATION OF BLACKS IN PETITIONERS' WORK FORCE AND THEIR PARTICIPATION IN THE RELEVANT LABOR MARKET SUPPORTS AN INFERENCE OF DISCRIMINATION

"There is virtual unanimity on the proposition that the showing of a statistical disparity between the proportion of blacks in the employer's workforce and the proportion of blacks in the relevant labor market makes out a *prima facie* case of discrimination in violation of Title VII" (Pet. App. 9b).[16] "In the problem of racial discrimination, statistics often tell much, and Courts listen." *Alabama* v. *United States*, 304 F.2d 583, 586 (C.A. 5), affirmed *per curiam*, 371 U.S. 37. Discriminatory impact often supports reasonable inferences about conduct and motivation. For that reason, as this Court made clear in *Village of Arlington Heights* v. *Metro-*

[16] See, *e.g.*, *United States* v. *Wood Lathers, Local 46*, 471 F. 2d 408 (C.A. 2), certiorari denied, 412 U.S. 939; *United States* v. *Chesapeake and Ohio Ry. Co.*, 471 F.2d 582 (C.A. 4), certiorari denied, 411 U.S. 939; *Rowe* v. *General Motors Corp.*, 457 F.2d 348 (C.A. 5); *United States* v. *St. Louis-San Francisco Ry. Co.*, 464 F.2d 301 (C.A. 8); *Carter* v. *Gallagher*, 425 F.2d 315 (C.A. 8), modified on rehearing *en banc*, 452 F.2d 315, certiorari denied, 406 U.S. 950.

politan Housing Development Corporation, No. 75-616, decided January 11, 1977, slip op. 3, "[t]he impact of * * * official action," which is often demonstrated through the use of statistics, "may provide an important starting point" in an attempt to show racial discrimination. *Yick Wo* v. *Hopkins*, 118 U.S. 356, 374; *Gomillion* v. *Lightfoot*, 364 U.S. 339, 341. In "extreme" cases, such as *Gomillion* and *Yick Wo*, the inference may be irresistible because it is impossible to conceive that non-invidious actions could have resulted in such starkly discriminatory patterns. In other cases the inferences from statistical evidence, while not irresistible, may substantially aid the finder of fact in determining whether a party's conduct is unlawful.

Absent discrimination, Hazelwood's work force statistics would ordinarily be expected to approximately mirror the share of black teachers in the workforce of other districts in the general employment area. That assumption will, of course, not always prove correct, but the likelihood of its correctness is sufficient to establish a rebuttable presumption. See IX Wigmore, *Evidence*, §§ 2487-2490 (3d ed. 1940). A low percentage of blacks in an employer's work force may reflect the accumulated effects of discriminatory recruitment, reputation as a discriminatory employer, and discriminatory hiring practices. Because all of these factors can be reflected in evidence of a statistical disparity, such evidence is highly relevant in an employment discrimination suit.

Once evidence of a substantial statistical disparity is presented, the defendant has the right to demonstrate that the disparity is not the result of discriminatory ac-

tions, but has been caused by other, racially neutral factors. Such statistics, while "not necessarily satisfying the whole case, have critical, if not decisive, significance—certainly, at least in putting on the employer the operational burden of demonstrating why, on acceptable reasons, the apparent disparity is not the real one." *Rowe* v. *General Motors Corp.*, 457 F.2d 348, 358 (C.A. 5). The function of statistics in shifting the evidentiary burden in a racial discrimination case is familiar to this Court as a result of its frequent use in jury selection cases. See, *e.g., Norris* v. *Alabama,* 294 U.S. 587; *Hernandez* v. *Texas,* 347 U.S. 475; *Turner* v. *Fouche,* 396 U.S. 346; *Castaneda* v. *Partida,* No. 75-1552, decided March 23, 1977.

Of course, as the court of appeals was well aware, "caution is necessary when using statistical evidence" in order to ensure that the patterns of professional employment are correctly analyzed (Pet. App. 8b, n. 5). "The raw data often will obscure the actual number of persons in the general workforce, white and black, who possess the special qualifications needed for particular openings" (*ibid.*). In order to ensure meaningful analysis, the court of appeals utilized only data concerning actual employment of teachers from surrounding school districts and confined the statistical base to "that area from which the employer draws its employees" (Pet. App. 10b, n. 7). Cf. *United States* v. *Ironworkers, Local 86,* 443 F.2d 544 (C.A. 9).

The uncontradicted testimonial and documentary evidence shows that the vast majority of Hazelwood teachers come from the St. Louis City and County

area.[17] Approximately 80 percent of the teachers hired by Hazelwood between October 1972 and September 1973 resided in St. Louis City and County at the time of their initial employment, and "[a]pproximately one-third of the teachers hired during this period resided in the City of St. Louis and 40 percent resided in areas of St. Louis County other than the Hazelwood District" (Pet. App. 10b, n. 7).[18]

Comparison of the percentage of black teachers in St. Louis City and County with the percentage of teachers in the Hazelwood School District provides compelling *prima facie* statistical evidence of discrimination by the District. Between 1949-1951 (when the District was established) and 1969, the District employed no black teachers (Pet. Br. 7). In 1969, the District employed one black teacher,[19] and in 1970-71 blacks

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[17] The source of the residence figures relied upon by the court of appeals is Exhibit 2, attached to Defendants' Answer to Plaintiff's Interrogatories, filed on October 1, 1973 (cf. Pet. Br. 51, n. 20). See also Hord Deposition 57.

[18] The district court's use of the percentage of black students in the Hazelwood District as a basis for comparison was particularly inappropriate because the Hazelwood School District encompasses the City of Black Jack, which has engaged in intentionally exclusionary activities in order to preclude blacks from residing in the City. *United States* v. *City of Black Jack,* 508 F.2d 1179 (C.A. 8), certiorari denied, 422 U.S. 1042.

[19] Petitioners assert that although the District employed no black teachers prior to 1969, "[o]ffers were made to black applicants for teachers' jobs before that" (Pet. Br. 7). The only evidence in the record to support this contention is a statement on deposition by Francis Huss, the Coordinator of Secondary Education (A. 52):

Q. • • • [D]o you recall when the first black faculty member was employed by Hazelwood?

represented 0.6 percent of the total teachers in the District. In 1970, the United States Census reported that more than 15 percent of the teachers in the combined St. Louis City and County area were black (Pet. App. 4b).

Hazelwood slightly increased its black faculty in the succeeding four years, but even so, the percentage of black teachers employed did not approach the 15 percent employment of blacks that could be expected absent discrimination. The only evidence on the subject introduced by petitioners indicated that the District hired in excess of 200 new teachers per year—specifically, 234 in 1971-72 and 282 in 1972-73 (see p. 7, *supra*). Yet in 1971-72 the complement of black teachers in the District increased only to seven. And in 1972-73, 13 of the District's 1,107 teachers were black (1.2 percent), while in 1973-74, after petitioners knew the District was the subject of investigation by the United States into allegations of racial discrimination,[20] the number of blacks rose only to 22 out of a total staff of 1,231 (1.8

A. The only thing I can recall, factual, is when it was done in the secondary school and I was involved in that.

Q. When was that?

A. Whenever Mrs. Davis at Hazelwood West was employed. Now this isn't the first one that was ever offered employment. She was the first one that accepted employment.

Q. How many had been offered employment?

A. I don't know.

[20] See Pl. Ex. 58 (containing a letter from the United States informing the District of its intention to file suit, and discussing a previous conference between District officials and attorneys for the United States on October 27, 1972). "[A]ctions in the face of litigation are equivocal in purpose, motive and permanence." *Jenkins* v. *United Gas Corp.*, 400 F.2d 28, 33 (C.A. 5).

percent (Pet. App. 4b; Pl. Ex. 55). The court of appeals concluded that "the size of the disparity * * * and the presence of other indicia of discrimination" (Pet. App. 8b, n. 5) were sufficient to place upon petitioners the burden of explaining the reasons for that pattern.[21]

Petitioners do not contest that the type of statistical comparison made by the court below is generally effective in demonstrating *prima facie* patterns of employment discrimination. Petitioners argue, however, that in this case the better statistical measure is a comparison of the percentage of black and white applicants who were hired in the years in question (Pet. Br. 44).

Whatever the theoretical value of such data, reliable evidence of that nature is not available. The record does not accurately establish the number of black ap-

[21] Petitioners claim that a comparison of the percentage of blacks on Hazelwood's faculty in 1973-74 with the percentage of black teachers employed in other area districts is irrelevant because they reflect hiring decisions made prior to 1972 (when Hazelwood was not covered by Title VII) as well as hiring decisions for 1972 and after (Pet. Br. 57). The District may have been covered by Title VII only since 1972, but it has always been under a Fourteenth Amendment obligation not to discriminate in hiring on account of race. Title VII was amended to cover State and local governments in order to implement the Fourteenth Amendment guarantee (see pp. 54-58, *infra*). Evidence of pre-Act discrimination is relevant, not only as the court of appeals noted (Pet. App. 16b) because it may show that present policies or practices although neutral on their face, perpetuate the effects of past discrimination, *United States* v. *Sheet Metal Workers, Local 36*, 416 F.2d 123 (C.A. 8), but also because it may shed light on present deeds or policies that may violate Title VII. *Buckner* v. *Goodyear Tire and Rubber Company*, 339 F. Supp. 1108 (N.D. Ala.), affirmed, 476 F.2d 1287 (C.A. 5); *Evans* v. *Local Union 2127, International Brotherhood of Electrical Workers, AFL-CIO*, 313 F. Supp. 1354 (N.D. Ga.).

plicants to the Hazelwood School District (see Pet. Br. 48). The method used to search Hazelwood's records in order to identify black applicants did not assure that all, or even most, were identified.[22] For example, black applicants who did not attend predominantly black high schools in St. Louis, or predominantly black colleges, or in some other manner identify themselves as black, may have been assumed to be white (see Tr. 307). The record also indicates that not all of the applications of rejected black applicants in the two years in question survived.[23] Accordingly, in introducing the evidence upon which petitioners now rely, counsel for the United States carefully noted that the list of applicants was not complete since "it has not been possible to obtain facts

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[22] The research analyst who identified possible black applicants in the Hazelwood application files described her method as follows (Tr. 307):

> I did examine applications when I was given a list of colleges and St. Louis area high schools that I was told were predominantly black and I examined applications for those people who had attended those schools and also I looked for applications that contained photographs that would indicate those persons were black and I looked for applications that had some specific racial designation on them and that list was submitted to my superior to be checked.

[23] At trial, black persons testified without contradiction that they had applied to Hazelwood and been rejected, although the District was unable to produce their application forms. See testimony of Pearlie Boyd (Tr. 62-71), testimony of Atry Cotton (Tr. 79-85), testimony of Westelle Florez (Tr. 125-129), and testimony of Jerome Trotter (Tr. 194-200). Of course, these as well as other applications might have been destroyed pursuant to District policy (see p. 5, n.6, *supra*).

on all or probably most black applicants to the district" (Tr. 9).[24]

Even if the number of blacks and the number of whites who applied for positions with the District could accurately be determined, that comparison would be of little probative value because petitioners manipulated the racial composition of the District's applicant flow so as to reduce minority representation (cf. Pet. Br. 46). As noted above, until this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, the Hazelwood School District employed no black teachers because of the official policy of refusing to employ blacks in segregated all white schools (Pet. App. 3b). Throughout the 1950s and the 1960s, when Hazelwood engaged in extensive recruiting of teacher applicants at predominantly white colleges and universities (Pet. App. 3a, 4b), it failed to recruit at predominantly black universities.[25] Although the scope of the District's recruit-

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[24] Petitioners introduced no evidence to show the number of black applicants. Cf. *Pierre* v. *Louisiana*, 306 U.S. 354, 361-362.

[25] Recruitment practices such as those described above have been held to violate Title VII. See, *e.g.*, *Parham* v. *Southwestern Bell Telephone Co.*, 433 F.2d 421, 427 (C.A. 8). The failure to recruit at predominantly black colleges and universities was intentional. As previously noted, the former superintendent of schools testified that he did not recruit at predominantly black Lincoln University because "that was a Negro university" (A. 55). Petitioners refer (Pet. Br. 11) to a "recruiting trip" by the personnel director to a black college at which "there was little interest in all-white Hazelwood" (Pet. App. 9b, n. 6). Almost ten years after Brown, in 1963 or 1964, the personnel director of the District visited Lincoln University. According to his testimony on deposition, he did not interview there. He talked to the placement director "about possible candidates" but "[t]he reaction at that

ing efforts was subsequently reduced, it continued to recruit only at predominantly white universities.[26] The effects of this intentional, racially selective recruiting were still being felt at the time of trial,[27] as a substantial proportion of applications continued to come from those schools at which Hazelwood had recruited in the past. Since Hazelwood intentionally neglected to establish ties with predominantly black colleges and universities, and discouraged black applicants over a period of 20 years, the racial composition of Hazelwood's applicant pool has been, and undoubtedly continues to be, distorted. In these circumstances, the principal statistical significance of accurate applicant flow data would be to show the impact, on black potential applicants, of Hazelwood's reputation and of discrimination in the District's past recruitment practices.[28]

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time was not very favorable because there was a tremendous shortage of teachers. This was the reaction from many universities" (Hord Deposition 8). Mr. Hord made no attempt then or at any later date to recruit Lincoln University graduates (*ibid.*).

[26] See discussion *supra* at pp. 18-19.

[27] For example, more than two thirds of the teachers listed by petitioners as having been hired between October 1972 and September 1973 had attended the predominantly white colleges and universities at which Hazelwood had actively recruited. Hazelwood personnel undoubtedly established relationships with the placement directors at each of these predominantly white schools at which Hazelwood recruited, and as students obtained jobs at Hazelwood its reputation as an employer also would have reached the schools from which Hazelwood recruited. Even after Hazelwood reduced the level of its active recruitment, the patterns that had been established continued. See Defendants' Answer to Plaintiff's Interrogatories, filed October 1, 1973, Exhibit 2; Defendants' Response to Plaintiff's Request for Admissions, No. 46, filed October 1, 1973.

[28] Throughout its brief, Hazelwood attempts to utilize the restricted black applicant flow as a rationale justifying the statistical

Petitioners also question the exact size of the disparity between the percentage of black teachers employed by the District and the number which would be represented in Hazelwood's work force absent discrimination, asserting that the hiring practices of the City of St. Louis divert to the city schools black applicants who might otherwise seek employment at "small outlying districts such as Hazelwood" (Pet. Br. 49-50).[29]

Nothing in the record supports the assertion that St. Louis City recruiting deprives the Hazelwood District of black applicants. Other suburban school districts that are smaller than Hazelwood do not suffer from the alleged disabling effects of St. Louis City recruit-

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disparity in its hiring of black teachers. For example, petitioners claim that even if the District had hired every qualified black applicant, its teaching staff "would have included no more than 70 blacks" (Pet. Br. 59). Since the District's hiring and recruiting policies had a profound effect on the number of blacks who applied, the applicant flow represents a present effect of past (and perhaps present) discrimination. Rather than explaining the statistical disparity, it is an independent ground for a Title VII violation. *United States* v. *Sheet Metal Workers, Local 36*, 416 F.2d 123, 131-133 (C.A. 8); *United States* v. *Local 38, IBEW*, 428 F.2d 144, 150-151 (C.A. 6), certiorari denied, 400 U.S. 943; *Local 189, United Papermakers* v. *United States*, 416 F.2d 980, 990-991 (C.A. 5), certiorari denied, 397 U.S. 919; *United States* v. *Local 1, Iron Workers*, 438 F.2d 679, 683 (C.A. 7), certiorari denied, 404 U.S. 430; *United States* v. *Local 169, Carpenters*, 457 F.2d 210, 216 (C.A. 7), certiorari denied, 409 U.S. 851.

[29] The Hazelwood District is not "small." It is the fourth largest school district in terms of student population in the State of Missouri, exceeded in size only by St. Louis City, Kansas City, and Springfield. Hundreds of school districts in Missouri are smaller than Hazelwood. *Directory of Public Elementary and Secondary Schools in Selected Districts*, U.S. Department of Health, Education, and Welfare, Office of Civil Rights, pp. 746-786 (1972).

ing.[30] Nor are teachers who are recruited by St. Louis City schools permanently removed from the pool of potential Hazelwood applicants. The record demonstrates a great deal of mobility within the teaching profession in the St. Louis area.[31] Indeed, the St. Louis school district is a prominent source of black applicants for Hazelwood. More than half of the rejected blacks whose applications were placed in evidence, and who had previous teaching experience at the time they applied to Hazelwood, had taught in the St. Louis school district.[32] Moreover, Hazelwood can hardly complain about the lack of black applicants when the record demonstrates that it failed even to interview most of the qualified blacks who did apply (Pet. App. 26b, n. 8)

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[30] For example, in 1972 Kinloch School District had an 88 percent black faculty; University City, a 26 percent black faculty; Wellston, an 80 percent black faculty; Normandy, a 13 percent black faculty; Webster Groves, a 12 percent black faculty; and Maplewood, a 10 percent black faculty (Pl. Ex. 54).

[31] Of the teachers hired by the Hazelwood District between October 1972 and September 1973, almost 45 percent had previous teaching experience. The great majority of those teachers were drawn from the St. Louis area (Pet. App. 10b, n. 7), Defendants' Answer to Plaintiff's Interrogatories, filed October 1, 1973, Exhibit 2. More than one third of the Hazelwood teachers whose applications were contained in Plaintiff's Exhibit 2 were employed as teachers at the time they applied to Hazelwood. Plaintiff's Exhibit 2 contains the employment files, including applications, of almost 500 teachers who were hired by the Hazelwood School District between 1971 and 1973. The teachers whose files were included in Pl. Ex. 2 were those who had been hired to fill positions for which rejected black applicants had previously applied (Testimony of Lucia Howard Duncan, Tr. 228-229).

[32] See Pl. Exs. 3, 8, 12, 15, 20, 21, 23, 24, 31, 32, 33, 35, 39, 44, 48, 68.

The racial statistics demonstrating substantial black teacher populations in St. Louis and in other districts merely suggest that black teachers gravitate to school districts in which jobs are open to them.[33] It would hardly be useful to compare the teacher population at Hazelwood only to those at other school districts that have discouraged black applicants. Nor is this a case where fine adjustments of statistics might eliminate some small statistical disparity. Even if the St. Louis City schools are omitted from the data base, a significant statisical disparity remains. In 1970, 5.7 percent of the teachers in St. Louis County were black (Pet. App. 19a). In that same year only 0.6 percent of the teachers on the Hazelwood faculty were black (Pet. App. 4b). Although by 1973-74 (after suit had been brought by the United States) 1.8 percent of Hazelwood's faculty was black (Pet. App. 1b, 4b), there still existed a significant statistical disparity between Hazelwood and other districts in the county that supported a *prima facie* case of employment discrimination.[34]

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[33] Many black applicants to the Hazelwood School District obtained positions in districts with substantial black teaching staffs after being rejected by Hazelwood. See, *e.g.*, Pet. App. 7a-8a (Nikki Lenoir, Alice Moore Roach, Atry Cotton); Pet. App. 9a (Robert Howell, Melvin Lowe); Pet. App. 9a-10a (James Washington); Pet. App. 11a (Naomi Cooksey); Pet. App. 12a (Samuel Downs); Pet. App. 14a (Geneice Kincaid); Pet. App. 15a (Charlene Catlin). Moreover, there is no evidence in the record that St. Louis City carried on an aggressive black teacher recruiting program prior to 1970 when the Census statistics were developed (cf. A. 92-95).

[34] Moreover, the effect of the large black teacher population in St. Louis city schools on the statistical average is at least partially offset by the abnormally low black teacher population in a number

Finally, petitioners argue that any comparison between Hazelwood's black teacher population and comparable participation of blacks in other schools is inappropriate because it "presumed that all teachers residing in that area are available for and interested in employment by Hazelwood" (Pet. Br. 51). Arguing that the validity of a workforce comparison depends upon "the inference that the labor market workforce composition is representative of those individuals who are in competition for the positions at issue" (Pet. Br. 52), petitioners state that most of the teacher work force is already employed and that the practicalities would "render impossible of achievement the racial distribution evidently contemplated by the court of appeals" (Pet. Br. 54).

Petitioners' argument is based upon a fundamental misconception concerning the role of statistics in a Title VII case.[35] Neither Title VII nor the court of appeals contemplated the achievement of a hypothetical racial distribution, and nowhere has the court or the United States suggested that Title VII requires the school district to employ any particular percentage of blacks. The statistical comparison serves only as part of the basis for making an appropriate inference as to whether a *prima facie* showing has been made that the District had engaged in discrimination on the basis

of suburban schools. For example, in 1972 the faculty of the Ferguson District was 1.3 percent black; Lindbergh was .05 percent black; Mehlville was .00 percent black; Parkway was .094 percent black; Pattonville was .051 percent black; and Rockwood was .022 percent black (Pl. Ex. 54).

[35] The argument also overlooks the evidence in this case of mobility among already employed teachers (see p. 30, *supra*).

of race. The court of appeals' assumption was not that the 15 percent of the area teacher work force that was black would be available to the District for future hiring, but that under a non-discriminatory regime one could have expected the percentage of black teachers on the Hazelwood faculty to be roughly similar to that on the average faculty elsewhere in the employment area.[36] Thus, neither the objective number nor the percentage of black teachers has independent significance; their only pertinence is in the disparity between the hiring pattern of Hazelwood and other nearby districts. Once it is understood that the statistics are being used only as a comparative measure of past hiring actions rather than as an indicator of potential future employment obligations, petitioners' extended discussion about the absolute numbers of blacks available to fill teacher jobs becomes quite beside the point.

C. PETITIONERS' STANDARDLESS HIRING PROCESS, CONSIDERED IN LIGHT OF THE UNEXPLAINED STATISTICAL EVIDENCE, ALSO EVIDENCED A PATTERN OF DISCRIMINATION

The court below recognized that the statistical evidence presented "is particularly revealing when considered in light of Hazelwood's subjectively-based selection procedures" (Pet. App. 11b-12b). The only

[36] Petitioners argue "[t]here are not enough potential black teachers in the St. Louis City and County area to allow the City to maintain a teaching staff that is 50 percent black and also permit the outlying districts to increase the black representation on their faculties appreciably" (Pet. Br. 53). Obviously, if petitioners had carried out a non-discriminatory hiring pattern, the numbers of black teachers employed by other school districts might have been correspondingly reduced.

requirement for employment as a teacher in the Hazelwood School District beyond eligibility for certification and possession of a health certificate is that a candidate be the "most competent" person available (Pet. App. 5a, 12b). Each of the District's 23 principals (all of whom are white) does his own hiring, and because his choice is rarely vetoed, he is vested with almost total discretion (Pet. App. 7b, 12b). Objective criteria such as number of years experience or possession of a master's degree are given little weight (Pet. App. 6a).[37] No evidence was presented below "which would indicate that any two principals apply the same criteria—objective or subjective—to evaluate applicants" (Pet. App. 12b).[38] One principal testified that interviewing an applicant was "like dating a girl, some of them impress you, some of them don't" (Pet. App. 12b). Finally, the process by which applicants are preselected for interviews is apparently quite arbitrary. As described by petitioners, the personnel director chose the applicants "by delving into his card file * * * until he has pulled the requested number of names for referral" (Pet. Br. 67).[39]

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[37] The court of appeals noted that "[p]rincipals are free to give whatever weight they desire to subjective factors in making their hiring decisions" (Pet. App. 12b).

[38] Petitioners allege that the process favors applicants most recently heard from but, as we noted (*supra*, n. 8), the evidence does not indicate that even this criterion was consistently applied.

[39] The present Superintendent of Schools described the District's lack of hiring standards (A. 60):

> Q. Has Hazelwood even developed any written policies or standards for interviewing for employing teachers?
>
> A. No standards.

See also testimony of Francis Huss, the Coordinator for Secondary Education in the District (A. 48). Clifford Kirby, the former Superintendent of Schools, stated (Kirby Deposition 29):

> We had no objective measurements other than your subjective opinions of the person hooked onto the recommendations and their files from the placement office. That is the way we selected them.
>
> Q. By "subjective standards" did you mean the impression that was made in the interview, primarily? Was this the key?
>
> A. The word, "subjective," means my opinion of you. I am subjectively sitting here now measuring you, as you are me. I don't have any measuring device, and even the credentials that are on file for a person are the subjective opinion of the person who has those credentials there.

The court of appeals specifically noted that "[t]he law does not preclude Hazelwood from considering previously announced, non-discriminatory, subjective criteria in deciding whom it will hire, *Moore* v. *Bd. of Educ. of Chidester,* 448 F.2d 709, 713 (C.A. 8), as long as such factors are shown to be related to job performance" (Pet. App. 13b). There is a difference, however, between subjectivity and the failure to employ any standards in a consistent manner. Here the outcome of an unsupervised, arbitrary process in which applicants were selected by "delving" and in which no two principals applied the same hiring standards—subjective or objective—was visible in the pronounced statistical evidence indicating disproportionately low hiring of blacks. The presence of an arbitrary hiring process, together with statistics demonstrating the virtual exclusion of blacks from the work force, adds to the likelihood that the *prima facie* inference of discrimination drawn from those statistics is correct. Arbitrary hiring procedures have shown themselves to be all too susceptible to the abuses of discrimination. *Rowe* v. *General Motors Corp.,* 457 F.2d

348 (C.A. 5). As the court below noted, "[v]ague and subjective criteria may disguise discriminatory practices, whether or not that was the original intent. * * * Because Hazelwood's hiring procedures have spawned a disproportionately white faculty, we view them with skepticism" (Pet. App. 13b).

Petitioners attempt to utilize the standardless nature of Hazelwood's hiring procedures as a defense to the discrimination claim, asserting that in view of the subjective nature of the process, "a prima facie case of statistical discrimination cannot be rebutted" (Pet. Br. 22). However, the fact that a standard is "subjective" does not mean either that it is inarticulable or that it is incapable of uniform application. For example, an employer could introduce evidence to show specifically why each rejected black applicant was less desirable than the white applicants hired instead, based upon whatever criteria it applied. As we shall discuss in more detail (pp. 41-42, *infra*), petitioners simply did not attempt to explain why many of the rejected black applicants about whom evidence was taken were not hired. In the absence of such evidence, "the lack of objective guidelines for hiring * * * serve to corroborate, not to rebut, the racial bias pictured by the statistical pattern of the * * * work force." *Brown* v. *Gaston County Dyeing Machine Co.*, 457 F.2d 1377, 1382 (C.A. 4), certiorari denied, 409 U.S. 982. See *Castaneda* v. *Partido*, No. 75-1552, decided March 23, 1977, slip op. 15.

Acceptance of Hazelwood's claim—that where there is an official policy of nondiscrimination and subjective standards, hiring decisions cannot be subject to judical

scrutiny—would largely insulate professional hiring from Title VII guarantees. But it is precisely because professional hiring standards must, to some extent, be subjective that they require careful scrutiny under Title VII where their application results in the selection of a disproportionately non-minority work force. Cf. *Rowe* v. *General Motors, supra.* The risk of discriminatory action increases greatly where the procedures are not only subjective but also diffused and standardless and "confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent." *Yick Wo* v. *Hopkins, supra,* 118 U.S. at 366-367.

The court of appeals properly decided that the absence of hiring standards adds weight to the *prima facie* presumption of discrimination raised by the statistical disparity. In the absence of any consistently applied hiring criteria, "race is the only identifiable factor explaining the disparity" in statistics. *Brown* v. *Gaston County Dyeing Machine Co., supra,* 457 F.2d at 1383. The court of appeals' decision is analogous in this respect to this Court's decision in *Turner* v. *Fouche,* 396 U.S. 346, 360-361:

> In sum, the appellants demonstrated a substantial disparity between the percentages of Negro residents in the county as a whole and of Negroes on the newly constituted jury list. They further demonstrated that the disparity originated, at least in part, at the one point in the selection process where the jury commissioners invoked their subjective judgment rather than objective criteria. The appellants thereby made

out a *prima facie* case of jury discrimination, and the burden fell on the appellees to overcome it.

D. THE FINDING THAT SIXTEEN REJECTED BLACK APPLICANTS HAD BEEN DISCRIMINATED AGAINST ON ACCOUNT OF RACE FURTHER CONFIRMED THE INFERENCE THAT A PATTERN OF DISCRIMINATION HAD OCCURRED

The court of appeals ruled that the United States established a *prima facie* case that each of 16 individual black applicants had been discriminated against on account of race, and that Hazelwood had failed to rebut that evidence (Pet. App. 15b-25b). These individual instances of discrimination buttress the inferences arising from the past history of discrimination, the absence of standards, and the current statistical disparities. Petitioners acknowledge that "[n]o question has been presented by us on certiorari specifically concerning the correctness of the court of appeals' judgment as to the 16 cases" and that "this Court * * * does not sit to resolve disputes over the weight of evidence" (Pet. Br. 62). Nevertheless, petitioners dispute the findings and holdings of the court below with regard to each of these 16 applicants.

Petitioners' argument that the court's evaluation of evidence regarding the rejected black applicants was "tainted" by its prior, "incorrect" evaluation of the statistical evidence is contradicted by the court's opinion. The court considered the evidence regarding these black applicants without regard to any of the other

evidence in the case."[40] The court of appeals specifically rejected the position that once the plaintiff has established its *prima facie* case of a pattern or practice of discrimination, the burden of proof shifts to the defendant to demonstrate that individual black applicants were not rejected on account of race: "We believe that for an applicant to be entitled to specific relief, the United States had the burden at trial of establishing a *prima facie* case of racial discrimination against him or her" (Pet. App. 15b). Quoting the four-pronged test enunciated by this Court in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, for proof of an individual claim of employment discrimination, the court of appeals required the United States to establish, with regard to each rejected black applicant (Pet. App. 15b-16b):

> * * * (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

In light of the *prima facie* showing of a pattern or

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[40] The court below ruled that (Pet. App. 14b) this "statistical evidence * * * and * * * Hazelwood's hiring procedures * * * indicate a *prima facie* case of a pattern or practice of employment discrimination in violation of Title VII." The court continued (Pet. App. 14b; emphasis supplied):

> *Buttressing* this aspect of the Government's proof is evidence of actual discriminatory practices * * * in the rejection of some 16 black applicants * * *.

practice of discrimination, the court below incorrectly placed the initial burden of proof with regard to the individual rejected black applicants upon the United States.[41] However, the fact that it did so refutes petitioners' claim that the court's findings with regard to these applicants were tainted by alleged errors in the statistical evidence presented. Moreover, because these findings were made independently, they constitute an additional ground in support of the court's holding that the government established a *prima facie* case of a pattern or practice of discrimination.

Petitioners attempt to counter the findings of discrimination against individuals by arguing that the process by which these applicants were rejected did not violate Title VII,[42] and that "[t]he demonstrated legitimacy of this process, *without regard to the specific facts of each case,* should control" (Pet. Br. 68; emphasis supplied). But, under *McDonnell Douglas,* the alleged legitimacy of the general process cannot be determinative where individuals have proven a *prima*

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[41] See Brief for the United States and the Equal Employment Opportunity Commission, *International Brotherhood of Teamsters* v. *United States and Equal Employment Opportunity Commission,* Nos. 75-636 and 75-672, pp. 52-64 (argued January 10, 1977). As we there contend, a proper allocation of the burden of proof, after the government's *prima facie* showing of a pattern or practice of discrimination, would require petitioners to show that rejected minority applicants were not the victims of racial discrimination. Under that approach, many more than 16 individuals would be rebuttably presumed to be entitled to relief here.

[42] They attempt to establish this proposition by use of application statistics that are inaccurate and incomplete (*supra,* pp. 25-28).

facie discrimination case—just as "[p]roof of a racially representative workforce composition would not overcome a showing of racial discrimination in the treatment of an individual applicant for employment" (Pet. Br. 45).

We need not burden this brief with a complete analysis of the evidence regarding each of the individual rejected black applicants. The court of appeals' opinion reviews the facts as to each applicant who was found to be a victim of discrimination (Pet. App. 17b-25b). In an appendix to this brief we have detailed the evidence with respect to five individuals as demonstrative of the court of appeals' careful application here of the *McDonnell Douglas* standard to establish a *prima facie* case of discrimination. With respect to each of the five, Robert Howell, Willie Palmer, Cynthia Edmond, Georgia Shaw, and Timotheus Carson, the United States demonstrated that he or she (1) belongs to a racial minority, (2) applied and was qualified for a vacant position with the Hazelwood School District, and (3) was rejected, and (4) that, subsequently, Hazelwood continued to hire persons for these positions who were less or no better qualified. Under *McDonnell Douglas* the burden therefore shifted to the District to rebut the *prima facie* case. However, in each case the District presented no evidence of the reasons why a particular white was chosen over the rejected black. Petitioners' brief now claims that a particular black must not have impressed his interviewers as much as the hired white (Pet. Br. 78), or that the rejection of another black is explainable because a particular field is "competitive" (Pet. App. 9a), or that the District

may have decided that an interview would have been "pointless" (Pet. Br. 70). These hypotheses are mere conjecture, without evidentiary support. A *prima facie* case of discrimination cannot be rebutted by vague hypothetical explanations and *post hoc* theories. The burden was placed upon Hazelwood "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas* v. *Green, supra,* 411 U.S. at 802.[43] Hazelwood failed to do so in the district court, and that failure cannot be cured now.

Petitioners assert that 14 of the 16 rejected applicants cannot, as a matter of law, be considered qualified for employment within the meaning of the *McDonnell Douglas* standard because none of the 14 was interviewed by a Hazelwood school principal (Pet. Br. 72). Nothing in *McDonnell Douglas* suggests that an employer's failure to grant an interview can render the

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[43] The dissenting judge in the court of appeals stated that the majority opinion required that "every qualified black applicant • • • be hired in favor of similarly qualified whites • • •" (Pet. App. 29b), and that in ordering injunctive relief "[t]he majority • • • takes an unwarranted step in directing and monitoring the operation of a local school system, in effect undertaking the administrative and operational powers of the school board and officials" (Pet. App. 30b). But evidence that a qualified black applicant was rejected in favor of a less or equally qualified white applicant does not prove discrimination; it merely shifts the burden to the employer to explain his actions. Here the District did not meet its burden. Furthermore, although a federal court would not have the power to "direct" or "monitor" the activities of a school district absent a violation of the law, where such a violation has been found, the court has the power, as well as the duty, to fashion appropriate equitable relief. See, *e.g., Swann* v. *Board of Education,* 402 U.S. 1, 15-16, 28; *Griffin* v. *School Board,* 377 U.S. 218.

applicant "disqualified" and unable to establish a *prima facie* discrimination case. Here each of the 14 applicants met all of the objective qualifications ever established by the District. It was incumbent upon the District to show why, on "nondiscriminatory reasons," its selection procedures (including the procedures for providing interviews) excluded these black applicants whose qualifications were apparently better than, or equal to, those of the whites who were chosen for the jobs for which they applied. The failure to provide such evidence justifies the court's finding of discrimination with respect to the individual applicants. Moreover, in this case the presence of a historical pattern of discrimination, the pronounced statistical disparity in hiring and the use of standardless procedures make it especially inappropriate for the use of an arbitrary interview selection system to constitute a sufficient answer to a showing of *prima facie* discrimination under the four-pronged test of *McDonnell Douglas.*

Petitioners have argued strenuously that the mere presence of a standardless hiring procedure without more does not constitute discrimination, that a statistical disparity in the employment of blacks does not alone prove discrimination, that a school board may have simply passed over 16 black teacher applicants without discriminatory intent, and that a history of discrimination does not mean that discrimination continues to exist. Title VII does not require that each element of evidence in itself be sufficient to prove discrimination. So long as those elements add up to a *prima facie* showing of discrimination, the burden then

shifts to the defendant. The court of appeals properly decided that the cumulative effect of these four factors was sufficient to establish a *prima facie* case and shift the burden to the District to provide evidence adequately explaining its actions. Petitioners, however, chose to restrict their rebuttal to the testimony of one witness relating "the total number of teachers who applied and were hired during the 1971-72 and 1972-73 school years" and exhibits consisting of a "policy manual, policy book, staff handbook, and historical summary of the formation of the Hazelwood School District " (Pet. App. 7b). That did not satisfy petitioners' burden."

Petitioners repeatedly claim that the *prima facie* showing acted as an irrebuttable presumption that discrimination occurred. The court of appeals did state that in the face of a statistical showing, explanations based upon subjective standards would be entitled to little weight (Pet. App. 13b-14b). That may have overstated the case. Indeed, elsewhere in its opinion the court of appeals indicated unequivocally that "The law does not preclude Hazelwood from considering previously announced, nondiscriminatory, subjective criteria in deciding whom it will hire" (Pet. App. 13b).

" In a similar situation, this Court held in *Turner* v. *Fouche, supra,* 396 U.S. at 361 (footnotes omitted) :

> The testimony of the jury commissioners and the superior court judge that they included or excluded no one because of race did not suffice to overcome the appellants' prima facie case. • • • No explanation for this state of affairs appears in the record. The evidentiary void deprives the District Court's holding of support in the record as presently constituted. "If there is a 'vacuum' it is one which the State must fill, by moving in with sufficient evidence to dispel the prima facie case of discrimination."

In any event, the question does not arise in this case because petitioners did not come forward with any pertinent showing in the district court at all. No explanation of the system was given to demonstrate how the interview selection process worked or that it was not a screening device excluding qualified black applicants. Nor did petitioners show that on the basis of particular subjective standards the rejected black applicants had been found to be less desirable than the white applicants actually chosen for employment.

It may be that if petitioners had chosen to do so, they might have presented evidence sufficient to rebut the government's *prima facie* statistical showing. Petitioners might also have explained why black applicants were frequently told that there were no vacancies in their field and whites were later hired for the same position (Pet. App. 17b-19b). Petitioners might have provided a rational explanation of why black applicants were denied jobs because they lacked certification, although the same standard was not applied to white applicants (Pet. App. 18b-24b). Petitioners might also have presented evidence explaining why in the face of a preference for successful student teachers black applicants who had successfully completed student teaching in the District were not even interviewed (Pet. App. 17b-18b, 21b-22b).

Petitioners did not choose to shoulder the burden of persuasion below, and their failure to do so cannot be cured by tendentious statistical analysis arrayed for the first time in this Court. A similar situation was presented in *Castaneda* v. *Partida,* No. 75-1552, decided March 23, 1977, where the Court held that a state failed

to rebut a *prima facie* case of racial discrimination in the selection of grand juries. In that case, the jury commissioners were the only ones in a position to explain the apparent under-representation of Mexican-Americans, but they never testified to rebut a *prima facie* statistical case. Although "[t]he showing made by respondent * * * shifted the burden of proof to the State to dispel the inference of intentional discrimination," the state "[i]nexplicably * * * introduced practically no evidence" (slip op. 15). The Court declined to rely upon a new statistical analysis "since there are so many implicit assumptions in this analysis, and we consider it inappropriate for us, as an appellate tribunal, to undertake this kind of inquiry without a record below in which these assumptions were tested" (slip op. 7, n. 8). Because the *prima facie* showing had not been rebutted, the Court affirmed the court of appeals' holding that there had been a denial of equal protection in the selection of jurors (slip op. 16):

> [W]e are not stating that the statistical disparities proved here could never be explained in another case; we are simply saying that the State did not do so in this case. See *Turner* v. *Fouche,* 396 U.S. at 361.

A fortiori, here, where the *prima facie* case of racial discrimination was based on several substantial factors in addition to statistical disparities, the court below correctly ruled (Pet. App. 14b-15b):

> We hold that statistical evidence demonstrating a disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the relevant labor market, when considered in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria, indicate a *prima facie* case of a pattern or practice of employment discrimination in violation of Title VII. Buttressing this aspect of the Government's proof is evidence of actual discriminatory practices in the hiring of teachers during the period prior to the effective date of Title VII and in the rejection of some 16 black applicants discussed below. The Government's proof thus established a *prima facie* case. Hazelwood offered no evidence adequate to rebut the inference of discrimination created by the aforementioned evidence. We therefore reverse the judgment of the district court.

II

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS APPLIED BY THE COURT OF APPEALS IS A CONSTITUTIONAL EXERCISE OF CONGRESSIONAL AUTHORITY

Petitioners assert that the application of Title VII to discrimination by state and local governments which is not "purposeful" cannot be sustained by Congress' powers under Section 5 of the Fourteenth Amendment.[45] Whether or not that view is correct, the question has no bearing on a Title VII case which, like the present one, involves purposeful discrimination. Congress acted well within its constitutional powers in

[45] Petitioners did not raise this constitutional challenge to Title VII either in the district court or in the court of appeals. The question is not properly raised in this Court in the first instance. *Duignan* v. *United States,* 274 U.S. 195, 200.

applying Title VII to state and local governments, and the Court need not in this case resolve the abstract question whether Title VII would be unconstitutional if applied to forbid wholly unintentional state action.

A. THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONERS HAD ENGAGED IN A PATTERN OR PRACTICE OF INTENTIONAL RACIAL DISCRIMINATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

The premise underlying petitioners' constitutional argument—that there was no determination of purposeful racial discrimination in the employment practices of the District—is erroneous. From the outset, this case was litigated as a case of intentional discrimination. In his opening statement, counsel for the United States said (Tr. 8):

> We will present testimony * * * which will show that the absence of black professional employees does not result from chance but is the result of purpose.
>
> Further, we will show that the Hazelwood District has deliberately continued employment policies which limit the number of black applications.

The evidence in the record and the court of appeals' opinion amply demonstrate that the Hazelwood School District engaged in purposeful discrimination in hiring against blacks from its inception in 1949-1951 until at least the 1973-74 school year. The court specifically stated, for example, that "[i]n our view, it is *more than mere coincidence* that the use of [Hazelwood's hiring] procedures produced only a few black teachers" (Pet. App. 12b; emphasis supplied).

The practices of Hazelwood, and other school districts in St. Louis County, prior to 1954, need not be subjected to sophisticated analysis to determine intent to discriminate. The court below found (Pet. App. 3b), and petitioners concede (Pet. Br. 7), that the Hazelwood School District maintained, prior to this Court's decision in *Brown* v. *Board of Education,* 347 U.S. 483, an intentional policy of assigning only white teachers to teach in white schools.

The evidence also established that Hazelwood continued to discriminate intentionally after 1954. Hazelwood's practice of requiring racial identification on some of its teacher application forms until 1962-1963 (Pet. App. 4a, 3b; Pl. Ex. 62),[46] its advertisement requesting "white only" teacher applicants (A. 71; Pet. App. 3b), and its continuing practice of recruiting teachers only at predominantly white universities (Pet. App. 4b), cannot properly be characterized as "racially neutral" practices that have "unintended racially disparate results" (Pet. Br. 17). Nor should they have been disregarded by the court below. "The historical background of a decision is one evidentiary source [of proof of intent], particularly if it reveals a series of official actions taken for invidious purposes." *Village of Arlington Heights* v. *Metropolitan Housing Development Corp., supra,* slip op. 14. Together with the other evidence of purposeful discrimination, these recruiting practices establish a history of intentionally discriminatory action by the District.

[46] Prior to 1954, Hazelwood's teacher application form contained a space for racial identification, as well as a space for a photograph (Pet. App. 3b). Hazelwood was required to use racially identifiable forms prior to 1954 in order to comply with the Missouri state segregation law (Pet. Br. 11).

The court of appeals specifically relied on "evidence of actual discriminatory practices * * * in the rejection of some 16 black applicants" during the period after the 1972 amendments became effective (Pet. App. 14b). Although the court did not use the words "intentional" or "purposeful" to describe its findings and conclusions, its detailed analysis of the District's treatment of these individuals showed that it was determining whether the applicants were rejected "because of" or "on account of" race (see Pet. App. 17b-25b). Surely unrebutted and unexplained evidence that the District repeatedly rejected apparently qualified black applicants in favor of less well-qualified whites provides a proper basis for a finding of intentional discrimination.[47]

The court of appeals found it significant that each school principal is vested with almost total discretion to hire whom he pleases, and that "[a]ll of the elementary and secondary school principals in Hazelwood are white" (Pet. App. 12b). As the court of appeals stated in *Rowe* v. *General Motors Corp.*, 457 F.2d 348, 359 (C.A. 5) (quoted favorably by the court below (Pet. App. 13b)):

[47] Moreover, Hazelwood's refusal to hire, or even interview, Robert Howell and Georgia Shaw cannot be justified as an application of a racially neutral policy with unintended racially disparate effects since the District deviated from an otherwise neutral policy of giving preference to persons who had successfully student taught at Hazelwood (see p. 7, n. 9, *supra*). "Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decision-maker strongly favor a decision contrary to the one reached." *Village of Arlington Heights* v. *Metropolitan Housing Development Company, supra,* slip op. 14.

> [P]romotion/transfer procedures which depend almost entirely upon the subjective evaluation * * * are a ready mechanism for discrimination against Blacks much of which can be covertly concealed * * *. We and others have expressed a skepticism that Black persons dependent directly on decisive recommendations from Whites can expect nondiscriminatory action.

The Court of Appeals for the Fifth Circuit in *Rowe,* like the court of appeals in this case, was referring to purposeful invidious discrimination, which is allowed to flourish in a standardless, unsupervised hiring process. The court below noted that "[t]he hiring procedures used by Hazelwood are similarly susceptible to discrimination" (Pet. App. 13b). It was properly concerned that the procedures used by Hazelwood "may disguise discriminatory practices, whether or not that was the original intent" of the procedures (*ibid.*). And, having found on the basis of unrebutted evidence that intentionally discriminatory hiring practices did occur under those procedures, the court was not required to determine whether the procedures themselves were intentionally designed to produce that result. Even if they were not, that would not change the purposeful nature of the discrimination practiced by those authorized under those procedures to act on the District's behalf.

Nor did the court of appeals' reliance in part on statistical evidence convert this case into one involving a racially neutral standard with an unintended racial impact. The statistical evidence in this case, which illustrates "[t]he impact of the official action—whether

it 'bears more heavily on one race than another,' " is precisely the kind of evidence that this Court has held relevant to the issue of intentional discrimination. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp., supra,* slip op. 13.

The court of appeals viewed the statistical evidence "in light of Hazelwood's subjectively-based selection procedures" (Pet. App. 11b-12b), the historical evidence, and the incidence of individual discriminatory acts, and concluded that the paucity of black teachers in the Hazelwood District is the result of intentional discrimination. This "inquiry into such circumstantial and direct evidence of intent as may be available" (*Village of Arlington Heights, supra,* slip op. 13) comported with this Court's suggestion in *Arlington Heights* (slip op. 13-15) of proper methods of "determining whether racially discriminatory intent existed" (*id.* at 15). In light of petitioners' failure to come forward with racially neutral explanations of the government's *prima facie* showing, the statistics and other evidence "indicate[d] that race is the only identifiable factor explaining the disparity * * *." *Brown* v. *Gaston County Dyeing Machine Co.,* 457 F.2d 1377, 1382 (C.A. 4), certiorari denied, 409 U.S. 982 (quoted by the court below at Pet. App. 14b).

While this Court in *Arlington Heights* indicated that Fourteenth Amendment "cases are rare" in which "a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face" (slip op. 13, citing, *inter alia, Yick Wo* v. *Hopkins,* 118 U.S. 356, and *Gomillion* v. *Lightfoot,* 364

U.S. 339), such cases are of course less rare under a statutory scheme such as Title VII which shifts the burden of proof to the state after a *prima facie* showing of discrimination has been made (especially where, as here, the *prima facie* showing also includes direct evidence of intentional discrimination). Such congressional adjustment of the burdens of proof in litigation is a familiar method of enforcing the post-Civil War amendments which this Court has upheld in the context of voting rights. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 335; *Georgia* v. *United States,* 411 U.S. 526, 536-539. It is a procedural means of enforcing those amendments which need not (*Beer* v. *United States,* 425 U.S. 130), and does not in this case, involve any substantive expansion of the constitutional prohibition.

This case, accordingly, does not present, and the Court need not decide, any question concerning the authority of Congress, under the principle of *Katzenbach* v. *Morgan,* 384 U.S. 641, and *Oregon* v. *Mitchell,* 400 U.S. 112, to prohibit employment practices of a state that do not involve intentional racial discrimination.[48]

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[48] We disagree, however, with petitioners' contention that in extending Title VII to public employment in the 1972 amendments Congress intended the rationale of *Griggs* v. *Duke Power Co.,* 401 U.S. 424, to be inapplicable (Pet. Br. 38-42), and with petitioners' alternative suggestion that the rationale of *Griggs* and its explanation in *Washington* v. *Davis,* 426 U.S. 229 and *General Electric Co.* v. *Gilbert,* No. 76-1589, decided December 7, 1976, should be re-examined (Pet. Br. 40-41, n. 13). The legislative history of the 1972 amendments contain repeated approving discussions of the *Griggs* rationale (see, *e.g.,* S. Rep. No. 92-415, 92d Cong., 1st Sess., pp. 5, 14 (1971)), as well as the explicitly expressed intent that employees of State and local government were to be afforded "the

B. TITLE VII AS APPLIED TO PROHIBIT DISCRIMINATION BY A PUBLIC EMPLOYER IS A PROPER EXERCISE OF THE CONGRESSIONAL COMMERCE POWER AND POWER TO ENFORCE THE FOURTEENTH AMENDMENT

As originally enacted, Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. 2000e *et seq.*, forbade employment discrimination by private employers, and found its constitutional authority in the Commerce Clause. In 1972, Title VII was amended, among other things, to bring governments, governmental agencies and political subdivisions within its coverage. *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 449, n. 2. In so extending the coverage of Title VII, Congress asserted its authority under both the Commerce Clause, and Section 5 of the Fourteenth Amendment (see, *e.g.*, S. Rep. No. 92-417, 92d Cong., 1st Sess., p. 11 (1972)).

That the 1972 amendments to Title VII were intended as an enactment to enforce the Fourteenth Amendment was explained by the House Committee Report as follows (H.R. Rep. No. 92-238, 92d Cong., 1st Sess., pp. 18-19 (1971) (emphasis added)):

> The expansion of Title VII coverage to State and local government employment is firmly embodied in the principles of the Constitution of the United States. The Constitution has recognized that it is inimical to the democratic form of government to allow the existence of discrimination in those bureaucratic systems which most directly affect the daily interactions of this Nation's citizens. The clear intention of the Constitution, embodied in the Thirteenth and Fourteenth Amendments, is to prohibit all forms of discrimination.
>
> Legislation *to implement this aspect of the Fourteenth Amendment* is long overdue, and the committee believes that an appropriate remedy has been fashioned in the bill. Inclusion of state and local employees among those enjoying the protection of Title VII provides an alternate administrative remedy to the existing prohibition against discrimination perpetuated "under color of state law" as embodied in the Civil Rights Act of 1871, 42 U.S.C. § 1983.[49]

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same benefits and protections in equal employment as the employees in the private sector of the economy" (*id.* at 9; cf. *Chandler* v. *Roudebush*, 425 U.S. 840). Congressional power to adopt such prophylactic measures under Section 5 of the Fourteenth Amendment is supported by analogy to the congressional prohibitions of literacy tests upheld by this Court in *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 333-334, 337, and *Oregon* v. *Mitchell*, *supra*, 400 U.S. at 118, notwithstanding the Court's prior holding in *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45, that the use of literacy tests as a qualification for voting is not *per se* unconstitutional. As the Court repeatedly has recognized, the post-Civil War amendments constituted "enlargements of the powers of Congress." *Ex parte Virginia*, 100 U.S. 339, 345, quoted in *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 454.

Nor do we agree with petitioners' suggestion (Pet. Br. 41-42), in reliance upon Mr. Justice Stevens' separate opinion in *Fitzpatrick* v. *Bitzer*, *supra*, that it would be incumbent on this Court to decide for itself whether the 1972 amendments were needed to secure the guarantees of the Fourteenth Amendment. It is for Congress to decide what legislation is necessary and proper in the exercise of its powers under either the commerce clause or Section 5 of the Fourteenth Amendment, and its choice of appropriate means for exercising those powers—so long as those means are not elsewhere prohibited by the Constitution—should be upheld. *E.g.*, *M'Culloch* v. *Maryland*, 4 Wheat. 316, 421; *Katzenbach* v. *Morgan*, *supra*, 384 U.S. at 650.

[49] See also S. Rep. No. 92-415, 92d Cong., 1st Sess., pp. 9-21 (1971).

There was, moreover, a substantial factual basis for the congressional determination that effective enforcement of Fourteenth Amendment rights required the application of Title VII to state and local governments.[50]

Petitioners claim that, as so applied, Title VII constitutes an impermissible intrusion into important state interests (Pet. Br. 21). But, as this Court stated in *Fitzpatrick* v. *Bitzer,* 427 U.S. 445, 455 in upholding an award of back pay under Title VII against the State's claim of sovereign immunity: "[T]here can be no doubt that this line of cases [*South Carolina* v. *Katzenbach, supra; Ex parte Virginia, supra*] has sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the states." See also *South Carolina* v. *Katzenbach,* 383 U.S. 301, 324.

The fact that, as so applied, Title VII—like the command of the Fourteenth Amendment itself—may influence the State's appointments of employees or officials is no bar to its enforcement. Else this Court would have upheld the prayer of the State in *Ex parte Virginia, supra,* to release a state judge from federal custody so that he could continue to perform his official duties. Instead the Court, in a contemporaneous interpretation of congressional power to enforce the Fourteenth Amendment, upheld the authority of Congress

[50] See *For All the People . . . By All The People: A Report of Equal Opportunity in State and Local Government Employment,* pp. 114, 128, 131-132 (1969); H. R. Rep. No. 92-238, *supra,* at 17; S. Rep. No. 92-415, *supra,* at 10. Cf. *Katzenbach* v. *Morgan,* 384 U.S. 641, 652-653.

to subject the judge to federal custody and indictment because of the discriminatory manner in which he was conducting his official state functions.

Nor does Title VII involve any interference with the discretion of state and local governments in determining the number of employees they will hire, the functions they will perform, the hours they will work, or the wages they will be paid. The state's ability to determine for itself the structure of state government employment thus remains unimpaired. Title VII merely provides remedial assurance that, in making its employment decisions within that structure, the state will fulfill its Fourteenth Amendment obligation not to discriminate on the basis of race or other improper criteria.[51] Accordingly, Title VII does not interfere with any attribute of state sovereignty constitutionally insulated from congressional exercise of the commerce power under this Court's decision in *National League of Cities* v. *Usery,* 426 U.S. 833.[52] In contrast to the situation in

[51] In thus requiring the state's employment decisions to be made on nondiscriminatory grounds, Title VII does not dictate whom the state shall employ. Petitioners miss this point (Pet. Br. 21-22) in focusing upon the relief available in a federal court for a violation of Title VII, rather than upon the limited nature of the obligations the state must meet in order to comply with Title VII.

[52] Indeed, in light of a similar difference in effect, most federal courts have concluded, principally on Fourteenth Amendment grounds, that the equal pay (for equal work regardless of sex) and age discrimination provisions of the Fair Labor Standards Act may constitutionally be applied to the states, even though *National League of Cities* struck down the application to the states of the wage and hour provisions. See *Usery* v. *Allegheny County Institution District,* 544 F.2d 148 (C.A. 3), certiorari denied, No. 76-1010, March 28, 1977, and cases cited in Appendix B, *infra.*

National League, compliance with Title VII costs the state nothing—its personnel expenditures remain totally self-determined.[53]

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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APRIL 1977.

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[53] The fact that a state may incur some expense in order to remedy its noncompliance does not mean that Title VII impermissibly interferes with state sovereignty. *Fitzpatrick* v. *Bitzer, supra; Edelman* v. *Jordan,* 415 U.S. 651.

APPENDIX A

Robert Howell is black (A. 79). He applied for a secondary social studies position in Hazelwood, first in May 1971 (A. 79-80), and again in March 1973 (A. 338). He possessed a Missouri life teaching certification (A. 340). Howell was a student teacher at Hazelwood at the time of his first application for employment there,[54] and his cooperating teacher in the District was impressed with his abilities (A. 80). He had received academic awards and scholarships (A. 80-81). Subsequent to his application in 1973, several whites were hired to teach social studies in the District (Pet. App. 17b), including one applicant who had no experience, and who had been placed on probation, suspended, and dismissed from college (A. 98-115). Another white applicant hired subsequent to Howell's second application had no experience, average ratings on his interview form, and average grades (A. 245-262). The District presented no evidence whatsoever with regard to Howell, and it made no attempt to explain Howell's rejection, especially in light of the District's policy of giving preference to teacher applicants who had student taught in the District (Pet. App. 6a, 17b-18b).

Willie Palmer is black (A. 87). He applied for a teaching position with Hazelwood in May 1972 (A. 346). He indicated on his application that he had graduated from all black Stowe Teachers College in St. Louis in 1954 (A. 348). He applied for positions with the Hazel-

---

[54] The courts below found that "[p]ersons with student • • • teaching experience at Hazelwood are given preference if their performance was satisfactory" (Pet. App. 6a, 17b-18b).

wood School District as a reading specialist, an administrator, science teacher, media specialist, curriculum lab., elementary grade teacher, or public relations officer (A. 346-347).[55] He had an excellent academic record (A. 380-389) and many years of experience teaching elementary grades, science and reading (A. 349). His application file contained many letters of recommendation (A. 354-371). Although Palmer was not certified as an administrator or science teacher, he was qualified to teach reading, or in the elementary grades (Pet. App. 24b-25b). Subsequent to Palmer's application, the District hired more than 50 persons to teach reading or elementary school for the 1972-73 school year (Pet. App. 24b-25b). Among them was an applicant (A. 278-308) who had been placed on academic probation in college (A. 306), and who received very mixed ratings on her interview forms (A. 286-287, 290-295), in spite of the fact that she had student taught in the Hazelwood District (A. 300). Another had mixed evaluations and average grades (A. 217-229). Yet another (A. 230-244) had been placed on academic probation for two semesters (A. 242-243). A fourth (A. 198-216) had very low grades in college (A. 213-216).

Cynthia Edmond is black (A. 84). She first applied for a social studies teaching position with Hazelwood in July 1972 (A. 330). She indicated on her application

[55] Petitioners assert that Palmer "ambiguously listed 'teacher in elementary grades' on his application" (Pet. Br. 70). All the application shows, however, is that he applied for several positions. The whites hired in preference to Palmer include one who applied for "all" elementary grades (A. 198) and another "2, 3, k, 1, 4, 5, 6" (A. 278).

that she had attended Fort Valley State College, Fort Valley, Georgia (A. 332), and she appeared personally at the Hazelwood District offices in the summer of 1973 (A. 85). Thus, the District had knowledge of Edmond's race. Although there is no evidence in the record that the District has ever maintained a "waiting list" of teacher applicants, Edmond was told by a District employee that "there were approximately five hundred teachers on the waiting list" (A. 85). Subsequent to Edmond's application, and her renewal of it the following year, the District hired white applicants who were less or no better qualified (see, *e.g.*, A. 98-115, 245-262). The District failed to present any evidence to specifically rebut the *prima facie* case established regarding Edmond.

Georgia Shaw is black (A. 9). She had student taught in the Hazelwood School District, and had received a favorable evaluation by her cooperating teacher (A. 406-407), applied for a teaching position in 1973-74 (A. 390-407), but was neither interviewed nor hired. At least thirteen whites with less or no better qualifications were subsequently hired to fill the positions for which Shaw had applied (Pet. App. 21b). Seven of these also lacked certification at the time of their application (*ibid.*). The United States therefore established a *prima facie* case of discrimination against Shaw, which the District made no attempt specifically to rebut. The district court erroneously ruled that Shaw was not qualified because she lacked certification at the time she applied (Pet. App. 16a), and no other explanation was put forward by the Dis-

trict for its failure to give Shaw preference in light of her successful student teaching experience.

Timotheus Carson is black (A. 8). He applied and was qualified for positions teaching secondary English, French, or German for the 1972-73 school year (A. 309-311). Carson was given an interview by the Hazelwood School District, and he received average and superior ratings by his interviewer (A. 317-318). The interviewer noted that Carson had 5 years of creditable experience, and was "interested in phase elective programs" (A. 318). However, the interviewer neglected to indicate whether Carson was recommended or not recommended (A. 318).[56] Subsequent to Carson's application the School District hired at least 23 teachers in Carson's field, many of whom were less or no better qualified than he (Pet. App. 21b). For example, one applicant (A. 116-133) had an interview rating no better than Carson's (A. 126-127), and had spent three semesters on academic probation while a student at the University of Missouri (A. 130-133). Another successful applicant (A. 149-163) had spent four semesters on academic probation at Southeast Missouri State University (A. 160-163). The District presented no evidence to explain why Carson was not hired.

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[56] On the face of Carson's application, in a box labeled "for Personnel Office Use Only," it is indicated that Carson was "Not Recommended" (A. 309). There is no indication who made that recommendation however.

APPENDIX B

CASES DECIDED AFTER *NATIONAL LEAGUE OF CITIES* v. *USERY*, 426 U.S. 833, PASSING UPON THE CONSTITUTIONALITY OF THE EQUAL PAY ACT AND THE AGE DISCRIMINATION IN EMPLOYMENT ACT AS APPLIED TO STATES AND THEIR SUBDIVISIONS

Equal Pay Act of 1963, 77 Stat. 56, 29 U.S.C. 206(d)

a. Cases upholding the Act

Usery v. *Allegheny County Institution District*, 544 F.2d 148 (C.A. 3), certiorari denied, No. 76-1010, March 28, 1977.

Christensen v. *State of Iowa*, 417 F. Supp. 423 (N.D. Iowa).

Usery v. *Charleston County School District*, D. S.C., No. 76-248, decided August 24, 1976.

Usery v. *Sioux City Community School District*, N.D. Iowa, No. C-76-4024, decided August 20, 1976.

Usery v. *Fort Madison Community School District*, S.D. Iowa, No. C-75-62-1, decided September 1, 1976.

Usery v. *Bettendorf Community School District*, 423 F. Supp. 637 (S.D. Iowa).

Usery v. *Berkeley Unified School District*, N.D. Cal., No. C-75-1558 SAW, decided September 27, 1976.

Usery v. *Kent State University,* N.D. Ohio, No. C75-550, decided October 6, 1976.

Usery v. *Washoe County School District,* D. Nev., No. R-75-216 BRT, decided October 13, 1976.

Usery v. *University of Nevada, Reno,* D. Nev., No. R-75-62 BRT, decided October 13, 1976.

Usery v. *Dallas Independent School District,* 421 F. Supp. 111 (N.D. Tex.).

Usery v. *University of Texas at El Paso,* W.D. Tex., No. EP-75-CA-221, decided October 14, 1976.

Usery v. *Memphis State University,* W.D. Tenn., No. C-75-54, decided October 29, 1976.

Usery v. *Baltimore County School District,* D. Md., No. K-76-762, decided November 16, 1976.

Usery v. *City of Brockton,* D. Mass., No. 76-2265-M, decided November 9, 1976.

Usery v. *Morrissey,* D. Mass., No. CA 74-2311-G, decided November 15, 1976.

Usery v. *A&M Consolidated Independent School District,* S.D. Tex., No. 74-H-1532, decided November 30, 1976.

Usery v. *Tennessee Technological University,* M.D. Tenn., No. 75-7-NE-CV, decided December 14, 1976.

Usery v. *Austin Peay State University,* M.D. Tenn., No. 75-42-NA-CV, decided December 14, 1976.

Usery v. *Kenosha Unified School District Number One,* E.D. Wisc., No. 73-C-399, decided December 13, 1976.

Usery v. *City of Sheboygan,* E.D. Wisc., No. 76-C-209, decided December 13, 1976.

Brown v. *County of Santa Barbara,* C.D. Cal., Nos. 75-3492-HP and 75-3978-HP, decided January 14, 1977.

National League of Cities v. *Marshall,* D. D.C. (three-judge court), No. 74-1812, decided January 31, 1977.

Usery v. *Eastern Kentucky University,* E.D. Ky., No. C.A. 76-15, decided January 21, 1977.

Usery v. *Council Bluff Community School District,* S.D. Iowa, No. 76-26-W, decided January 27, 1977.

Usery v. *Oregon,* D. Ore., No. 74-629, decided February 12, 1977.

b. Cases holding the Act invalid

Howard v. *Ward County,* 418 F. Supp. 494 (D. N.D.) (Title VII case denying Equal Pay Act jurisdiction but applying Equal Pay Act standards to afford relief to employee of county).

Usery v. *Owensboro-Daviess County Hospital,* 423 F. Supp. 843 (W.D. Ky.).

Age Discrimination in Employment Act of 1967, 81 Stat. 602, 29 U.S.C. 621 *et seq.*

Cases upholding the Act

Usery v. *Board of Education of Salt Lake City,* 421 F. Supp. 718 (D. Utah).

Springer v. *City of Los Angeles,* C.D. Cal., No. CV 76-2449-FW, motion to dismiss denied November 24, 1976.

Aaron v. *Davis,* W.D. Ark., No. LR-76-C-16, motion to reconsider judgment for plaintiff denied December 9, 1976.

☆ U.S. Government Printing Office: 1977—232-810/83

FILED
APR 18 1977

No. 78-255

In The

Supreme Court of the United States

October Term, 1976

HAZELWOOD SCHOOL DISTRICT; C. O. McDONALD, Superintendent; ROBERT BISCHOF, ROBERT COLEMAN, DOROTHY SMITH, CHARLES SWEENEY, DONALD MATTOX and MILTON STRAUSS, Members of the Board of Education of the Hazelwood School District,

Petitioners.

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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April 1977

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In The

Supreme Court of the United States

October Term, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT; C. O. McDONALD, Superintendent; ROBERT BISCHOF, ROBERT COLEMAN, DOROTHY SMITH, CHARLES SWEENEY, DONALD MATTOX and MILTON STRAUSS, Members of the Board of Education of the Hazelwood School District,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

I. THE COURT OF APPEALS ERRED IN DISREGARDING EVIDENCE THAT HAZELWOOD TREATED ITS ACTUAL JOB APPLICANTS IN A NON-DISCRIMINATORY MANNER AND RELYING ON UNDIFFERENTIATED WORKFORCE STATISTICS TO FIND AN UNREBUTTED PRIMA FACIE SHOWING OF A PATTERN OR PRACTICE OF EMPLOYMENT DISCRIMINATION.

The second of two questions presented by petitioners is whether a court may disregard evidence that an employer has treated job applicants in a nondiscriminatory manner and rely on undifferentiated workforce statistics to find an unrebutted case of employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

That, we submit, is a question of law. It is a question of what sort of evidentiary showing satisfies Title VII. It requires some consideration of the record, to be sure. But it is not such a question as implicates the "clearly erroneous" rule or justifies assertions that these petitioners "misconceive the role of a reviewing court in a Title VII case" and are making some new and belated response to an established Government prima facie case. (Gov't Br. 17.)[1] The question is whether on the evidence of record an unrebutted prima facie case was established.

The Government and its supporting amici do not overtly dispute the proposition that comparative workforce statistics such as were relied upon by the court of appeals must yield to applicant flow data if the latter are reliable. There should be no doubt of that proposition as a matter of logic and law. A comparison of the racial composition of an employer's workforce with the racial composition of a relevant labor market may be appropriate in a Title VII case if there is no evidence of how the employer treated actual applicants for jobs or if the employer has distorted the racial composition of its pool of applicants by intentionally encouraging or discouraging applications from one group or another. But where reliable, undistorted applicant flow data are available, they are the best evidence of whether the employer has discriminated in its hiring.

[1] The assertions, which are recurrent both in the Government's brief and in the briefs of the amici, are in any event odd, given the posture of this case. The district court tried the facts and decided for petitioners and was reversed by the court of appeals. If the findings of any court are entitled to the benefit of the "clearly erroneous" rule, they are the findings of the district court. McAllister v. United States, 348 U.S. 19 (1954). And if the role of a reviewing court has been misconceived in this case, the misconception is that of the court of appeals, which acknowledged that it was acting extraordinarily when, having corrected what it considered an error of law on the part of the district court, it made certain findings on its own rather than leaving factual findings to the district court on remand. (Pet. App. B 16b.)

Instead of disputing this proposition, the Government and the amici have attempted to deny its relevance. It is this attempt, forecast in the brief in opposition, that made it necessary for us to examine the record in some detail in our opening brief. For the Government and the amici say that (1) direct evidence as to how Hazelwood treated black applicants for teaching jobs does not exist in the record or is unreliable, and (2) the workforce statistics were not the only evidence that the court of appeals relied upon in finding that Hazelwood had violated Title VII. We demonstrate in Part A, immediately below, that there is in the record reliable evidence permitting comparison of Hazelwood's treatment of black applicants for teaching jobs with its treatment of applicants generally and, even making full allowance for any possible gaps in the evidence, the record shows that black applicants were treated at least as favorably as applicants generally. In Part B we demonstrate that the linchpin of the court of appeals' decision is the comparative workforce statistics and that other evidence of record cannot sustain the decision when those statistics (which are in any event defective) are made to yield to the better, more direct evidence of Hazelwood's actual treatment of applicants.

A. The Evidence Established That Hazelwood Treated Its Actual Job Applicants in a Nondiscriminatory Manner.

Neither the Government nor any of the amici denies that reliable applicant flow data — evidence as to how Hazelwood dealt with all its job applicants, black and nonblack — would provide the best indication of whether Hazelwood discriminated against black applicants. They assert rather, in the Government's words, that "reliable evidence of that nature is not available." (Gov't Br. 25; see also *id.*, 26-27.) In so asserting, they do not question the accuracy and reliability of the evidence of record establishing

the number of applicants of all races for teaching positions at Hazelwood in certain years and the number of hirings in those years. (Pet. Br. 47.) They say that the Government's evidence of 52 unsuccessful black applicants in the relevant years (Pet. Br. 48) is incomplete and that the number may not be a true index to the demand among blacks for jobs at Hazelwood.

There is no reason to believe the Government's showing is incomplete in any material respect. In the compilation of the key Government exhibit, Pl. Ex. 49, all of Hazelwood's applicant files and other employment records were searched by the FBI, which copied at least 70,000 documents (Tr. 297) and then, using information from the records and other sources, sought out rejected black applicants; it located several whose application forms were not submitted in evidence (Gov't Br. 26 n.23). Exhibit 49 resulted from these efforts of trained investigators and not, as the Government asserts on brief (Gov't Br. 26), from the attempt of a single Justice Department analyst to spot black colleges and other aids to racial indentification on application forms. The analyst's testimony that is quoted by the Government (*id.* n.22) concerned a separate matter, her identification of blacks among those who had been employed by Hazelwood. She testified repeatedly that in the compilation of Exhibit 49, in which the experience of unsuccessful black applicants is depicted, she "was given a list of persons who applied to the Hazelwood School District that I was told were black." (Tr. 243; see also Tr. 229, 279, 293, 304.)

It is true that the Government's trial counsel said in his opening statement that it had not been possible "to obtain facts on all or probably most black applicants" for teaching jobs at Hazelwood. (Gov't Br. 26-27.) When counsel's remarks are quoted in full (see LDF Br. 11), they cast a wholly different light. From counsel's complete remarks, it is clear that, while it may be reasonable to suppose that not quite all black applicants were identified, counsel's

statement that "probably most" were missing was hyperbole. Counsel gave as the reasons why the Government's data on black applicants were incomplete "the district's actions severely restricting the pool of available qualified black applicants and its practice of destroying application files after one year . . . ." (Tr. 9.) The first reason for the alleged incompleteness of the data is no reason at all; Hazelwood did not restrict the number of black applicants (see pp. 6-8, *infra*), and the fact that in counsel's view there were not as many black applicants as there might have been has nothing to do with whether all the black applicants could be identified. The second reason, given the timing of the Government's search of Hazelwood's files, can refer only to applications made in 1971 and not at all to applications for the 1972-73 and 1973-74 school years, the first full school years in which Hazelwood was subject to Title VII.[2]

The relevant evidence indicates that, in fact, the 52 individuals identified in Exhibit 49 as unsuccessful applicants are nearly all of the blacks who applied but were not hired as teachers by Hazelwood during the 1971-74 period. Among the 52, nine were interviewed for jobs and 43 were not. (See also Pet. Br. 67-68.) The evidence establishes that very few, if any, unsuccessful black applicants not included in the 52 were interviewed in 1971 or later. The Government introduced the deposition testimony of all 23 of Hazelwood's principals. Each was asked to identify all

[2] There is no reason to believe there were significant numbers of 1972-73 black applicants unaccounted for. Addendum A to this reply brief shows that about the same number of black applicants were identified for 1972-73 as for 1973-74.

The district court noted that Hazelwood "had retained personnel records" for 1972-73 and 1973-74. (Pet. App. A 7a.) After the Government was first given access to Hazelwood's files in October 1972, old applications were not discarded. Thus, when the FBI photographed Hazelwood's files in the summer of 1973, those files included the applications for both the 1972-73 and 1973-74 school years.

the black applicants he had ever interviewed. The responses, which are collected in Addendum B to this reply brief, cover a period dating back to perhaps 1967 and include the names of 20 persons who were hired, two who were recommended but did not come to work and seven who were not recommended for employment, and references to a very few persons whose names the principals could not recall. There cannot be any significant number of blacks, not already identified by name on this record, who were rejected for teaching jobs after being interviewed.

If, then, other unknown blacks have applied unsuccessfully for jobs at Hazelwood, they were not interviewed. There is no reason to think any such applicants were intentionally denied interviews, since Hazelwood's personnel director could not have identified blacks whom the FBI could not identify.

Addendum A to this reply brief is a revision of the calculations made at pages 47-48 of our opening brief. It counts twice those black applicants who applied in one year and may have renewed their applications for another year and also makes allowance for any possibly missing 1971 applicants. It shows, just as the original calculation did, that on realistic assumptions as to how many black applicants may be missing from the record, blacks were hired at up to twice the rate of hire for applicants generally and that, even if one assumes quite unrealistically that fewer than half the black applicants appeared in the record, blacks were hired at about the same rate as applicants generally. Thus, what the figures of record show as to Hazelwood's treatment of black applicants should not be rejected merely because they may not be precise.

When the successful and unsuccessful black applicants for teaching positions at Hazelwood in the early 1970's are all counted, the total is undeniably a small one. Contrary to

the assertions of the Government and certain of the amici (Gov't Br. 27-28; LDF Br. 12), however, there is no evidence that the smallness of the number is a result of Hazelwood's discouraging applications from blacks. Certainly there is no direct evidence of discouragement. Twenty-five black applicants for teaching positions testified at the trial. None testified that Hazelwood had a bad reputation among black students preparing for careers in education or other potential black teachers. None testified to any other facts from which discouragement of black applications could be inferred.[3] By the hiring years at issue in this case, advances in the law, increased integration of college student bodies and the knowledge that Hazelwood was hiring blacks had surely dissipated any lingering effects of a 1962 "white only" advertisement, the use up until that same decade-past year of an application form requesting racial identification and Hazelwood's concentration, when recruiting was still called for in the 1960's, on colleges that were not predominantly or traditionally black. It should occasion no surprise that, although Hazelwood's doors are open on an impartial basis, there are only a relative handful of black teachers at Hazelwood and that, although offers were made earlier (App. 52-53), there were no black teachers until 1969. The area served by Hazelwood has been very predominantly white in its population, as demonstrated by the racial composition of its student enrollment.[4] The blame for that situation, if blame there be, is not

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[3] On the contrary, the evidence is that some black applicants go out of their way to inform Hazelwood of their race. Thus, Georgia Shaw attached a photograph to her application (App. 394), and Delores Penton telephoned the district's personnel director to inform him she was black (Tr. 179). Another applicant wrote across his application, "I am black." (Pet. App. B 26b n.8.)

[4] The Government (Gov't Br. 9) ascribes to Hazelwood a defense suggested by the district court's remarks that the proportion of black faculty members approximately coincided with the proportion of black

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upon the governors of the Hazelwood schools. *Compare United States* v. *City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975). The complaint did not allege and the Government did not attempt to prove that the racial makeup of the communities served by their schools was an element of their violation of Title VII.

B. Reliance on Comparative Workforce Statistics Is Essential to the Decision of the Court of Appeals; and Absent Such Statistics, the Evidence Does Not Support a Finding of a Pattern or Practice of Discrimination.

The Government and the amici emphasize evidence other than the comparative workforce statistics by way of minimizing the extent of the court of appeals' reliance on the latter. There is no doubt that the court of appeals in its opinion did refer to the incidents in Hazelwood's history that we have just mentioned and to its hiring methods and discussed Hazelwood's treatment of 16 black applicants as to whom the court said that there had been discrimination.

We submit that, on any fair reading of the court of appeals' opinion, the comparative workforce statistics were what was essential to the court's decision that Hazelwood had engaged in a pattern or practice of discrimination. Indeed, in none of the opposing briefs is it urged in so many words that it would be possible to find Hazelwood liable in the absence of the statistical comparison between the proportion of black teachers on Hazelwood's faculty and

[4] (continued)
students (Pet. App. A 19a). Hazelwood never took the position that this rough equivalence demonstrated conclusively that it had not discriminated in the hiring of faculty, and of course there is nothing in Hazelwood's position or the evidence of record that in the slightest supports the amicus ACLU's wild assertion that there was a quota on black teacher hiring related to the proportion of black students in the student body (ACLU Br. 12).

the proportion of black teachers in a supposed labor market.

In case there is any doubt, we respond briefly below to the treatment of the other evidence in the opposing briefs and to their attempts to defend the workforce comparison despite the defects we have pointed out. In the end, as we hope will have been made clear, the comparative workforce statistics remain as the essential center of the court of appeals' decision. Having such a core, the decision must collapse, because reliable direct evidence of the comparative treatment of actual black and nonblack job applicants is available and demonstrates that Hazelwood has not discriminated against blacks, whatever the flawed workforce comparison might indicate.

1. Remote Pre-1972 Events Do Not Establish Post-1972 Discrimination.

The incidents from Hazelwood's history have been thoroughly discussed. The important point is that the record reveals no connection between Hazelwood's present hiring practices and the "white only" advertisement, the old application forms and the former recruiting trips. In the absence of something like the workforce statistics, pre-1972 events cannot prove post-1972 discrimination.[5]

[5] We note here the lengths to which the Government goes in trying to make of our argument something it is not — an argument as to the facts that is somehow foreclosed by the "clearly erroneous" rule. Of the "white only" newspaper advertisement that ran in Jackson, Mississippi, in 1962 (the same advertisement ran without the "white only" phrase elsewhere, see App. 72, 74) the Government says that the "court of appeals specifically found that 'Hazelwood placed' the advertisement (Pet. App. 9b)" and that Hazelwood "does not contend that this finding is 'clearly erroneous.' " (Gov't Br. 18 n.14.) The district court, the court to whose findings the "clearly erroneous" rule might have some relevance, thought the newspaper advertisement incident not worth mentioning. And despite the Government's characterization, the court of ap-
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2. Hazelwood's Hiring Methods Are Not Evidence Of Discrimination Absent A Showing — Not Made Here — That They Operated To The Disadvantage Of Black Applicants.

The court of appeals said that it considered the statistical evidence of a disparity between the proportion of blacks in Hazelwood's workforce and the proportion of blacks in the relevant labor market "in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria . . . ." (Pet.App. B 14b; see also *id.* at 11b-12b.) Hazelwood's hiring procedures, characterized with a number of different pejoratives by the Government and the amici, obviously are not, standing by themselves, proof of discrimination. Were the procedures what the opposing parties try to make them out to be, they might be susceptible to being used to discriminate, but their mere existence cannot logically prove discrimination. And there is no indication of discriminatory manipulation of the hiring process in the record. By the express statements of the court of appeals, the existence of the questioned hiring procedures was something that shed light on the statistics — no more.

In fact, the record shows that blacks are not excluded in disproportionate numbers in either the process of referral for interviews or the process of interview-and-evaluation itself.

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[5] (continued)
peals made no "finding," resolved no conflicts in the evidence; at the page cited by the Government it recited "evidence" that "Hazelwood placed newspaper advertisements for 'white only' teachers in 1962 . . . ." (By no account was there more than one such advertisement.) For what it is worth, earlier, in its statement of "Hazelwood's record on minority hiring," the court described the advertisement incident neutrally, without stating that Hazelwood was responsible for the "white only" phrase. (Pet. App. B 3b).

The process by which applicants are selected for interviews is designed to reduce an unmanageably large number of applicants to a series of small groups, created one at a time in response to the occurrence of vacancies. In selecting applicants for interviews, the personnel director accords some preference to those most likely to be available. Thus, an applicant who visits or telephones Hazelwood from time to time increases his or her chances of being referred for an interview.[6] The personnel director screens application forms to determine that each referred applicant possesses — or, as in the case of a college senior, is eligible for — a Missouri teacher's certificate.[7] The personnel director makes no other distinctions, endeavoring merely to find the requested number of minimally eligible applicants for each interview request.[8]

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[6] For example, applicant Reid visited the district several times and was offered a position (which she declined) after her second interview. (Tr. 187; see App. 30.)

[7] The Government inexplicably now contends that Hazelwood treated black college seniors differently, denying them interviews (and therefore jobs) because they lacked Missouri certification, while interviewing nonblacks who had yet to graduate (Gov't Br. 45; see also Lawyers' Comm. Br. 6). Hazelwood never contended that Missouri certification was a prerequisite to an interview, and did not reject any applicants for that reason. (See Hord dep. 10.) While the district court, in its decision issued one year after trial, was apparently under that impression (Pet. App. A 12a, 16a), it was wrong.

[8] The evidence does not disclose where in Hazelwood's hiring process the district's former (and successful) student teachers are accorded a preference. While the district's principals may prefer to hire such persons — all other factors being equal — the fact that two black former student teachers were not referred for interviews does not establish that Hazelwood departed from its policy when blacks were involved. There is no evidence at all as to what proportion of nonblack student teachers suffered precisely the same fate amid the flood of applications. The suggestion that Hazelwood favors only nonblack student teachers (Gov't Br. 7 n. 9, 59; Lawyers' Comm. Br. 18) is without support in the record. We do not contend that the referral system works with mechanical perfection — only that it functions without racial motivation or effect.

There is, in short, nothing to suggest that race plays any role in the selection of applicants to be interviewed. Approximately 40 percent of black applicants were interviewed. (Pet. Br. 68.) There is no reason to believe that this proportion is substantially different from that for all applicants, and accordingly there is no reason to suspect the operation of either a mechanism of purposeful racial exclusion or one that produces an unintentional racial disparity.

Blacks fare so well in the second hiring step — the interview-and-evaluation process — that one would, on the basis of statistics alone, suspect the operation of a process that favors rather than excludes them. Job offers were made to approximately 70 percent of blacks who were interviewed (Pet. Br. 74),[9] a much higher percentage than appears to have obtained for nonblacks. And the court of appeals held that, of the seven identified blacks who were interviewed but rejected, five suffered no discrimination.

Ironically, it is the interview process that has drawn most of the pejoratives. The criticism has been only slightly muted by the realization of what has just been said about blacks' relative success in the interview process. Of the 16 applicants found by the court of appeals to have been the subjects of individual discrimination, only two were subjected to the "vague and subjective criteria," the "standardless hiring process," the evaluation by 23 principals, all white, to which the criticism of Hazelwood's hiring procedure (see, *e.g.*, Pet. App. B 13b-14b; Gov't Br. 33-37) is directed. During the same period 16 blacks were subjected to the same procedures and hired.

[9] The number of black applicants who were interviewed is known with some precision. See pp. 5-6, *supra*, and Addendum B to this reply brief.

3. The Cases of 16 Rejected Applicants Do Not Establish Discrimination.

We note at the outset that the Government no longer contends, as it did in opposing certiorari (Br. in Opp. 8), that the court of appeals' "findings" as to the 16 would, without the aid of any statistical data, be sufficient to support a finding that Hazelwood had engaged in a pattern or practice of discrimination in violation of Title VII. We said in our opening brief that the findings as to the 16 are inexplicable except on the assumption that a pattern or practice of discrimination had been otherwise proved. Tested against the standard of *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), the cases of the 16 do not, standing by themselves, prove or indicate a pattern or practice of discrimination. [10] Indeed, those cases cannot even buttress the statistical workforce evidence as the court of appeals said that they did, because they do not involve any discrimination whatever.

The Government has shown only that Hazelwood did not offer interviews to 14 black applicants whose paper credentials did not render them ineligible for interview referrals, and that Hazelwood hired other persons instead of two black applicants whom it did interview. The 14 were excluded by operation of a virtually mechanical, neutral practice, described above, and the remaining two were excluded by operation of an equally neutral (*i.e.*, not racially linked) legitimate evaluation process.

[10] Of course, absent a finding of a pattern or practice of discrimination, the court was powerless to award relief to the 16 applicants — or anyone else — in this action brought by the Attorney General under § 707 of the Civil Rights Act, 42 U.S.C. § 2000e-6. The court of appeals may have omitted to note this distinction, referring to the *applicants* (rather than the Government) as having "established a prima facie case of discrimination" (Pet. App. B 17b; see also *id.*, 20b).

The proposition — endorsed by the court of appeals and by the Government (Pet. App. B 16b-17b; Gov't Br. 42-43) — that the 14 are, as a matter of law, "qualified" for employment by Hazelwood under the *McDonnell Douglas* rule, is without merit. At most, these individuals are (or were) "qualified" for an interview — or, more correctly, "qualified" for the same chance to be interviewed as was accorded to applicants generally. Neither these 14 nor many other applicants were interviewed. Assuming *arguendo* that under *McDonnell Douglas* such evidence alone constitutes a prima facie case,[11] then all that is necessary to rebut that prima facie case is a showing that the 14 were denied interviews by a "legitimate nondiscriminatory" process. *McDonnell Douglas Corp.* v. *Green*, *supra* at 802. As we have explained in some detail (Pet. Br. 61-73), the record created at trial amply makes that showing.

The cases of Carson and Ellis — the two black applicants who were interviewed but not hired — raise only the issue whether Hazelwood's interview-and-evaluation process operated fairly to exclude them from employment. These two were rejected because they were not the "best qualified" applicants for the positions for which they were interviewed.[12]

[11] In our view, even the basic elements of a prima facie case have really not been presented as to these 14. An applicant is entitled to no more than a fair chance at selection for an interview. There is no evidence at all that these 14 were denied that chance, and to evaluate their treatment on the basis of whether they actually received an interview is to assume that they should have been interviewed. However, the analysis set forth in the text, which is perhaps too generous to the party attempting to show discrimination, serves equally well to negate the possibility that discrimination could legitimately have been found here.

[12] Carson was interviewed for one job, Ellis for two. The Government persists, in its brief, in describing these applicants as having been in competition for all positions opening in their areas of interest after their applications reached Hazelwood. This, of course, is not how the referral system worked. As we explained in our opening brief (at pp. 77-78), (continued)

It is our view that neither can be considered "qualified" for employment within the meaning of *McDonnell Douglas* since judgmental factors beyond mere paper credentials are legitimately a part of the process of hiring professionals. But even assuming *arguendo* that they can be considered "qualified," then any prima facie case of discrimination depending on that foundation was rebutted by evidence — amply set forth in the Government's own case — that the process by which they were found not the "best qualified" was valid and not racially-linked. Under the *McDonnell Douglas* rule, the Government could perhaps have attempted to rebut that showing with proof that Hazelwood's evaluation process was a mere pretext for discrimination; but the Government did not attempt to do so, and could not have done so successfully where 70 percent of blacks who are interviewed succeed in the process.

4. The Comparative Workforce Statistics Relied On By The Court Of Appeals Are Meaningless.

So we are left with the workforce statistics. They are different from the other categories of evidence we have discussed. If they showed what it is urged that they showed, they might, standing alone, prove a case of a pattern or practice of discrimination; they are not of such a nature that they merely buttress or cast light on some other aspect of the Government's evidentiary showing. But, apart from

[12] (continued)
Carson failed in his one round of competition (for a position as a high school English teacher). Carson was not in competition for the half dozen similar positions that opened subsequently.

Ellis was afforded two interviews but was not considered the "best qualified" applicant by either interviewer. She was rated "below average" in at least one respect by each. (Pl. Ex. 12.) The Government does not quarrel with our demonstration (Pet. Br. 78 n.54) that the court of appeals, in holding Ellis "qualified" by virtue of her supposed lengthy experience, misread the record and overstated her experience.

the fact that the best of workforce statistics cannot be relied on to prove a case of discrimination when better, more direct evidence of the treatment by the employer of black and nonblack job applicants is available and contradicts the statistics, the workforce statistics here are seriously flawed.

The Government simply asserts, with no basis whatever in the record, that, if there were no discrimination, the racial composition of Hazelwood's faculty would resemble that of the population of employed teachers living in the combined St. Louis City-County area. (Gov't Br. 21.) That is not the case.

The City of St. Louis, which employs about one fourth of the area's teachers, dominates hiring in the area. The City adheres to a racial hiring quota designed to cause the composition of the City's faculty to resemble the racial makeup of the City's school enrollment or overall population. We demonstrated in our opening brief (at pp. 52-55) that the inevitable effect of the City's practices is to distort the area workforce statistics and to divert eligible blacks who might otherwise be available for employment in suburban jurisdictions such as Hazelwood. The 15 percent black proportion of the supposedly relevant labor market is meaningless in light of the City's successful policy of maintaining a 50-50 racial balance on its faculty. Comparison with the area workforce of Hazelwood's two percent black faculty proves nothing.

* * *

The Government misconceives the whole burden of our argument in support of our proposed negative answer to the second question presented when it asserts that we have engaged in the advocate's old trick of separating out each category of evidence and arguing that none standing by itself would be sufficient to support the challenged judgment. (Gov't Br. 43-47.) Our purpose in analyzing the

evidence has been quite different. It has been to show that the comparative workforce statistics were and in the nature of things had to be what the court of appeals relied upon in finding a violation of Title VII because none of the other evidence could, standing alone or in combination, have supported a finding of a pattern or practice of discrimination. We have also argued that the comparative workforce statistics were flawed. But, much more important, we have shown that the workforce comparison, even if valid on its own terms, cannot lawfully sustain a holding that Title VII was violated because other, more telling evidence — reliable direct evidence of the relative treatment of actual black and nonblack job applicants — was available and told a story the precise contrary of the story of discrimination derived by the court of appeals from the workforce statistics.

In large part this better evidence of applicant flow was developed by the Government and came in as a part of its case. Petitioners supplied only the figures as to overall annual applications and hirings. All of the data were of record. Petitioners in this Court have not done anything remotely like presenting the kind of new statistical case that the majority of the Court in *Castaneda* v. *Partida*, No. 75-1552, decided March 23, 1977, slip op. at 7 n.8, declined to consider. Petitioners present here no new assumptions untested below, which is what the Court saw in *Castaneda*. Petitioners' data are from the record, and the case they support is the case that petitioners have advanced from the beginning — that they did not discriminate against black applicants for teaching positions in violation of Title VII and there is no evidence in the record that they did.

II. HAZELWOOD WAS FOUND TO HAVE VIOLATED TITLE VII ON ACCOUNT OF NON-PURPOSEFUL DISCRIMINATION, AND THE CONSTITUTIONALITY OF TITLE VII AS SO APPLIED CANNOT BE SUSTAINED UNDER ANY GRANT OF CONGRESSIONAL POWER.

The Government and the amici respond to the constitutional question we have presented — whether Section 5 of the Fourteenth Amendment empowers Congress to prohibit by Title VII employment practices of a state agency in the absence of proof of purposeful discrimination on the basis of race — principally by arguing that the issue is not presented in this case. They contend that our constitutional question is erroneously premised because the court of appeals could and did find that Hazelwood purposefully discriminated against applicants on the basis of race. They also suggest that the Court can avoid the Fourteenth Amendment issue here by upholding the application of Title VII to Hazelwood under the Commerce Clause or, in the case of the amici but not the Government, the Thirteenth Amendment.[13] We submit below that the first argument, which seeks to characterize this case as one involving purposeful discrimination, is based on a faulty reading of the opinion of the court of appeals and the record. Thereafter we urge that neither the Thirteenth Amendment nor the Commerce Clause can be invoked to uphold the application of Title VII to Hazelwood in this case, and conclude by responding briefly to the limited points that the Government has made with respect to the merits of the Fourteenth Amendment issue.

[13] One of the amici contends that Title VII can be upheld as applied to Hazelwood here under Congress' spending power. (LDF Br. 23-24.) The Government has declined to endorse this contention, doubtless because neither Title VII in general, nor this case in particular, involves any issue about the denial of federal funding. The spending power rationale asserted here would have been just as appropriate (or inappropriate) in National League of Cities v. Usery, 426 U.S. 833 (1976), where this Court did not see fit to mention it.

As the Government points out, it litigated this case "[f]rom the outset . . . as a case of intentional discrimination." (Gov't Br. 48.) Moreover, the court of appeals specifically noted that Hazelwood was charged under the Fourteenth Amendment, as well as under Title VII (Pet. App. B 1b), and made clear its understanding that invidious, purposeful discrimination is something quite different from conduct that, though neutral in terms of racial motivation, may violate Title VII in some contexts because it produces a disparate racial effect.[14] Nevertheless, the court of appeals did not discuss anywhere in its opinion the proof required to establish constitutionally prohibited discrimination, and never once described as "invidious," "intentional" or "purposeful" the Title VII discrimination by Hazelwood that it found to have been established at trial. It found no Fourteenth Amendment violation. The court of appeals, in short, specifically declined to find that Hazelwood's employment practices were racially motivated.

The Government, however, now argues, in effect, that wherever "discrimination" appears in the opinion of the court of appeals, this Court should read instead "purposeful invidious discrimination." (Gov't Br. 51.) The sole support claimed for this interpretation of the opinion below is the observation therein by Mr. Justice Clark for the divided court that the meager number of black teachers at Hazelwood was, in the view of the majority of the panel, "more than mere coincidence." (Gov't Br. 48.) If this is indeed the point at which the court drew the conclusion of purpose that the Government attributes to it, it is strangely indirect for a judge not noted for expressing himself by indirection.

[14] The court of appeals' remedial instructions to the district court included a specific reference to employment practices that have "the purpose *or effect* of discriminating against any individual because of his race or color." (Pet. App. B 26b) (emphasis supplied).

There is no reason not to believe that the holding below was carefully, deliberately stated by the court of appeals to preclude the interpretation that the Government now seeks to give it — and not just because logic compels that conclusion on the face of the opinion itself. The record, as we have shown, cannot sustain any finding of a pattern or practice of discrimination by Hazelwood in violation of Title VII — even if the Act should be construed to encompass such a violation in the absence of proof that Hazelwood purposefully discriminated against applicants on the basis of race. If, as the Government urges, this case is treated under the statute exclusively as one charging purposeful discrimination, it requires proof of the additional element of purposefulness. Certainly a record that cannot sustain a finding of a violation of Title VII in the absence of proof of intentional discrimination cannot do so against the more rigorous standard, and we think that the court of appeals would agree. (See also Pet. Br. 26-30.) The court of appeals not only did not but could not make the finding of racially motivated discrimination that the Government now urges on this Court as the basis of the opinion below. The constitutional issue is thus squarely presented.

The Government makes but fleeting reference to the Commerce Clause when discussing in its brief the constitutionality of Title VII as applied to Hazelwood, and it declines to adopt the claim of the amici that Title VII can be upheld under the Thirteenth Amendment.[15] The Government stresses that Congress intended its application of Title VII to state agencies as an exercise of congressional power under Section 5 of the Fourteenth Amendment.

[15] However broad Congress' authority "to determine what are the badges and the incidents of slavery" that may be prohibited under § 2 of the Thirteenth Amendment, Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440 (1968), this Court has never approved exercise of that power in circumstances that did not involve allegations that individuals had intentionally been accorded different treatment because of their race. *See, e.g.*, Jones v. Alfred H. Mayer Co., *supra*; McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976).

(Gov't Br. 55.) *See Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 453 n. 9 (1976). Even when referring to the Commerce Clause, the Government describes application of Title VII to the states as a "remedial" matter reflecting Congress' interest in ensuring vindication of Fourteenth Amendment rights. (Gov't Br. 57.) The nature and importance of Congress' interest in applying Title VII to state agencies, then, must be assessed in terms of the Fourteenth Amendment rights to which that interest relates.

There can accordingly be no argument here that, even if Title VII as construed by the court of appeals is not "appropriate legislation" to enforce the substantive prohibitions of the equal protection clause, the Act nevertheless reflects some congressional priority that may be pursued — at the cost of direct conflict with the exercise of state sovereignty — under the Commerce Clause. If Title VII cannot be upheld under Section 5, it cannot be sustained under the Commerce Clause.

A school district's interest in selecting as teachers those it considers best qualified — under standards that are nonracial and accordingly do not violate the equal protection clause — without regard to the resulting racial makeup of its faculties is unquestionably an "attribute of state sovereignty constitutionally insulated from congressional exercise of the commerce power under this Court's decision in *National League of Cities* v. *Usery*, 426 U.S. 833" (Gov't Br. 57). The Government claims that there is no impermissible interference by Congress with the exercise of state sovereignty here because Hazelwood's "personnel expenditures remain totally self-determined," as do "the number of employees [Hazelwood] will hire, the functions they will perform, the hours they will work, [and] the wages they will be paid." (Gov't Br. 57.)

The Government does not respond to the most important argument that we make in our opening brief at pages 21-22 concerning the practical consequences that Title VII, as construed by the court of appeals, would necessarily have when applied to Hazelwood or any other school district that

might find itself with a faculty that did not match in racial makeup some supposed area workforce. In the present case it would displace Hazelwood's procedures for the hiring of its teachers. Enforcement of Title VII as construed below would have a dramatic effect on who will teach at Hazelwood or in any other school district similarly situated.

This impermissible displacement of Hazelwood's "freedom to structure [its] integral operations" would not occur because of some number of dollars that the school district must expend to bring itself into and maintain its compliance with Title VII, nor would it occur because of any effect on the number of teachers hired or their functions, hours or wages. If *National League of Cities* were whittled down to its particular facts in the manner suggested, which is the Government's implicit argument, that case of course could be distinguished from this one. But so to limit *National League of Cities* would deny the very constitutional rationale that impelled this Court to invalidate the statute that was there at issue in its application to state agencies. Neither the Government nor any of the amici suggests any reason why this fresh decision should be so promptly stripped of all but the scantest precedential force. Fundamental respect for state sovereignty is essential if our constitutional system is to operate effectively, and this bedrock principle cannot be squared with the significant disruption of public school systems that would necessarily result if Title VII could be applied to a school district in the absence of proof that it intentionally discriminated against certain applicants on account of race, sex or religion.

The issue then, is whether Title VII as applied here can be upheld under Section 5 of the Fourteenth Amendment.[16]

[16] We see no purpose served by speculation about how this Court should treat the provisions of the Equal Pay Act or the Age Discrimination in Employment Act, under the Fourteenth Amendment or any other constitutional provision, if and when those issues are presented to it. (See Gov't Br. 57 n.52 and App. B.)

We agree with the Government (Gov't Br. 54-57) that Section 5 empowers Congress to prohibit by Title VII racially motivated hiring practices of a state agency, but if that were a constitutional question it would not be posed in this case. The issue here, noted but not decided in *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 456 n. 11 (1976), is whether Title VII can be sustained under Section 5 when a state agency is held to have violated the statute in the absence of findings or proof that the agency purposefully discriminated against applicants on the basis of race.

Analysis of the issue is not advanced, as the Government seems to think it is (Gov't Br. 52-53), by invocation of the phrase "prima facie case." There is no magic to that bit of lawyers' Latin; it merely denotes such a case as, not answered, entitles the party making it to judgment. If the governing rule of law is, as under the Fourteenth Amendment, that the party is entitled to judgment only if purposeful discrimination is proved, then a prima facie case is made only if discriminatory purpose is shown directly or is the reasonable inference from facts proved. In *Castaneda* v. *Partida*, No. 75-1552, decided March 23, 1977, for example, the majority of the Court thought the only reasonable inference from the wholly unexplained discrepancy between the racial composition of the grand jury rolls and the racial composition of the population was a purpose to discriminate. Purpose to discriminate is not a necessary or even a fair inference from the statistical showing made here of disparate racial impact of hiring procedures, and tagging that showing as "prima facie" does not make the inference any fairer.

We are content with the argument on the Fourteenth Amendment issue stated in our opening brief at pages 31-44 but point out in addition that the legislative history to which the Government refers (Gov't Br. 53 n.48) does not respond to the evidence cited in our opening brief (at 38-40) to demonstrate Congress' understanding that the substantive

prohibitions of Title VII are no broader than those of the equal protection clause. The Government cites references to *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), in the legislative history of the 1972 amendments to Title VII, but these references show only that Congress understood *Griggs* as a case dealing with employment practices that perpetuated the effects of past discrimination. *See* S. Rep. No. 92-415, 92nd Cong., 1st Sess. 5, 14 (1971). Page nine of the cited Senate committee report indicates nothing more than Congress' concern that employees in both public and private sectors should have equal access to the *remedial* procedures included in Title VII.[17]

Assessment here of congressional power under Section 5 of the Fourteenth Amendment is not aided "by analogy to the congressional prohibitions of literacy tests . . ." (Gov't Br. 54 n.48), which were upheld under the Fifteenth Amendment's narrow prohibition of denial or abridgment of voting rights, following findings by both Congress and this Court that such

> "tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered in a discriminatory fashion for many years." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 333-34 (1966) (footnote omitted).

As we point out at page 36 of our opening brief, *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), dispels any notion that the scope of Congress' power to enforce the equal protection clause can be defined by reference to congressional authority under the Fifteenth Amendment. In *Oregon* v. *Mitchell* a majority of the Court could not be mustered to

[17] Chandler v. Roudebush, 425 U.S. 840 (1976), also deals with the scope of remedial rights available under Title VII.

sustain under the Fourteenth Amendment a nationwide suspension of literacy tests that was upheld under the Fifteenth Amendment. Moreover, the application of Title VII to state agencies in 1972 was not based on congressional findings comparable in any way to those that the Court considered when first reviewing voting rights legislation in *South Carolina* v. *Katzenbach*.

CONCLUSION

For the foregoing reasons and those stated in petitioners' opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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April 1977

ADDENDUM A

Hiring Rate For Black Applicants

Plaintiff's Exhibit 49 contains the names of 54 persons alleged by the Government to have been unsuccessful applicants for the school years 1971-72, 1972-73, and 1973-74 (the "1971-74 period"). Of these, one (Carol Jackson) was hired, and one (Reid) was offered a job but declined it; neither renewed her application for a second year.

Of the remaining 52, eight applied for school year 1971-72,[1] 21 applied for the first time for 1972-73, and 23 applied for the first time for 1973-74.

Of the 21 who first applied for the 1972-73 school year, four (Carson, Downs, Palmer and Roach) are known not to have renewed their applications for 1973-74. Although there is reason to believe that some of the others also did not renew for a second year, let us assume that all of them in fact did so.[2]

Let us assume further that all the known 1971-72 applicants also submitted a second application in a subsequent year.[3] Finally, let us assume that the known ap-

---

[1] The eight 1971-72 applicants are Gray, Hauk, Hayes, Howell, Kincaid, Carolyn Thomas, Rosa Thompson and Jerome Trotter. Jerome Trotter probably applied in 1970, not 1971, but his testimony is ambiguous. (Tr. 195-99.)

[2] This assumption unquestionably exaggerates the number of applicants who renewed. The evidence shows that five (Edmond, Ellis, Jones, Mary Wilson and Robert Wilson) did renew their applications or reapplied for 1973-74. But it seems likely that several others (*e.g.*, Alexis Smith and Triplett) did not renew; the silence of the Government's evidence as to them, in view of the other evidence presented, suggests nonrenewal. And there is simply no information as to the remainder, although it is known that several found other teaching jobs and thus may have had no reason to keep their Hazelwood applications current.

[3] The evidence is that Kincaid applied again for 1972-73 (but not 1973-74) and that Howell applied again for 1973-74 (but not 1972-73). There is no evidence as to the others.

plicants for 1971-72 are only one half the total number of unsuccessful black applicants for that year, and that *all* the unsuccessful black applicants for 1971-72 renewed their applications or reapplied in a subsequent year.[4]

On the basis of the foregoing, the calculations as to the success rate of black applicants (Pet. Br. 47-49) would be revised as follows:

Number of Applications Submitted by Black Applicants, 1971-72 Through 1973-74:

52 identified unsuccessful applicants

17 applicants who received job offers

17 renewed applications presumed to have been submitted by identified applicants who first applied for 1972-73

8 renewed applications presumed to have been submitted by identified applicants who first applied for 1971-72

8 applications hypothetically submitted by applicants, not identified at trial, for 1971-72

8 renewed applications submitted for subsequent years by the eight hypothetical 1971-72 applicants, not identified at trial

---

110 Total

Thus, the 17 who received job offers constituted not less than 15.5 percent of black applicants (*i.e.*, 17 divided by 110). Even if there were not 110 but *twice* that many black

[4] In our opening brief (at p. 48) we performed a similar calculation using 30 as the number of unidentified hypothetical black applicants for 1971-72. This seems too high for use in a realistic analysis. The eight known applicants from that year are probably the only ones of the year's applicants to renew for a subsequer ' year (any other renewed applications would have been spotted when Hazelwood's files were reviewed in 1972 and 1973); and our governing assumption for the present calculations is that all unsuccessful applicants reapplied.

applicants, the black hiring rate for the 1971-74 period would be not less than 7.7 percent (*i.e.*, 17 divided by 220).

The overall hiring rate for all applicants for 1971-72 and 1972-73 combined was 9.4 percent. (Pet. Br. 47.) The exact figure for 1973-74 is not known, but on the basis of the record statistics, it is around 5.3 percent (123 divided by 2300) (Pet. Br. 47 n.14); on that basis, the overall three-year hiring rate is 8.2 percent (*i.e.*, 639 divided by 7800).[5]

Accordingly, even making the most exaggerated assumptions as to the number of unidentified black applicants and as to the number who renewed their applications for a second year, it is clear that the hiring rate for blacks over the 1971-74 period could not have been significantly less than that for applicants generally. And if more reasonable figures are used, it becomes apparent that the hiring rate for blacks was significantly *higher* than that for all applicants.

[5] The figure of 7800 total applicants may, of course, include some who are counted twice. But counting twice all blacks who may possibly have renewed their applications, as we have here, provides a proper comparative measure.

ADDENDUM B

Black Applicants Interviewed By Hazelwood

The Government introduced at trial the deposition testimony of the principals of Hazelwood's high school, its three junior high schools, and its 19 elementary schools. Each deponent was asked whether he had ever interviewed any black applicants, and, if so, for their names and for other identifying information. The aggregate of the principals' testimony is the following:

Hired:

1. Atkins, Norman, 1971 (Hedrick dep. 63-64)
2. Burroughs, former student teacher (Huss dep. 47-48; Fuqua dep. 12-13)
3. Carter, Timotheus, 1972 (Negri dep. 175)
4. Clark, (first name not stated), 1973 (Selby dep. 164)
5. Davis, Margaret, 1969 (Beckemeier dep. 192-93)
6. Gerst, Jean, 1972 (Huss dep. 40-44; Negri dep. 176)
7. Holmes, Bob (Fuqua dep. 13, 15-16)
8. Houston, Barbara, 1973 (Negri dep. 182)
9. Johnson, Anita (Fuqua dep. 13)
10. Lunt, Barbara (Fuqua dep. 13, 15-16)
11. Page, Ken, 1972 (Negri dep. 176)
12. Payne, Dorothy, 1969 or 1970 (Gilman dep. 133-34)
13. Pillow, Anita, 1973 (Selby dep. 163)
14. Ree, Gwendlyn, 1972 (Selby dep. 163)
15. Register, Marilyn, 1969-70 (Maddux dep. 76-77)
16. Sanders, Mattye, 1972 (Selby dep. 162)
17. Scott, Phyllis (Fuqua dep. 12-13)
18. Thomas, Olita (Fuqua dep. 13)
19. Watkins, Karen (Lofaro dep. 30)
20. Youngblood, Brenda, 1972 (Miller dep. 150-51)

Offer Made and Declined:

21. Reid, Sandra, 1973 (Berry dep. 56-59)

Recommended For Employment, But Did Not Become Certified and Therefore Was Not Hired:

22. Lewis, Margaret (Gilman dep. 134)

Not Hired:

23. Adamson, Rose, 1972 (Woods dep. 140-41)
24. Arps, (first name not stated), "6 or 7 years ago" (Selby dep. 164)
25. Ellis, Beverly, 1972 (Weaver dep. 8-10; Berry dep. 56-58)
26. Jackson, (first name not stated), 1973 (Sandy dep. 23)
27. Lewis, (first name not stated), "5 or 6 years ago" (Barger dep. 39-41)
28. Riggs, Alberta (Negri dep. 176-77, 183; Beckemeier dep. 195-97; Huss dep. 40-44)
29. Trotter, (first name not stated) (Gruender dep. 90-93; Stinson dep. 116-17)

Unidentified Persons (May duplicate each other and those listed above):

one, in addition to Ellis (Weaver dep. 8-10)

one (Jones dep. 127)

no more than two, in addition to Watkins (Lofaro dep. 30)

one (for a librarian position), in addition to Lewis (Barger dep. 39-40)

one, several years ago (Bridges dep. 48)

one, 1971-72 (Mullen dep. 102-03)

unknown number (Fox dep. 9)

Supreme Court, U.S.
FILED
APR 1 1977
MICHAEL RODAK, JR., CLERK

No. 76-255

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

HAZELWOOD SCHOOL DISTRICT, et al., *Petitioners,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS AMICUS CURIAE

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---

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The Lawyers' Committee for Civil Rights Under Law was organized in 1963 at the request of the President of the United States, John F. Kennedy, to involve private attorneys throughout the country in the national effort to assure civil rights to all Americans. The Committee's membership today includes two former Attorneys General, nine past Presidents of the American Bar Association, two former Solicitors General, a number of law school deans, and many of the

nation's leading lawyers. Through its national office in Washington, D.C. and its offices in Jackson, Mississippi and eight other cities, the Lawyers' Committee over the past fourteen years has enlisted the services of over a thousand members of the private bar in addressing the legal problems of minorities and the poor in voting, education, employment, housing, municipal services, the administration of justice, and law enforcement.

The Lawyers' Committee and its staff have a long history of support for, and participation in, school desegregation litigation. For example, the Committee filed a brief and participated in oral argument as *amicus curiae* in *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969). Volunteer attorneys, under the auspices of the Lawyers' Committee, have assisted plaintiffs' counsel in numerous proceedings which resulted from this Court's decision in *Alexander. See, e.g., Gordon* v. *Jefferson Davis Parish School Board,* 446 F.2d 266 (5th Cir. 1971). More recently, staff and volunteer attorneys of the Lawyers' Committee have assisted in representing plaintiffs in such cases as *Morgan* v. *Kerrigan,* 509 F.2d 580 (1st Cir. 1974) *cert. denied,* 421 U.S. 963 (1975); *Brinkman* v. *Gilligan,* 518 F.2d 853 (6th Cir. 1975), *cert. denied,* 423 U.S. 1000 (1975) and *Dayton Board of Education* v. *Brinkman,* 539 F.2d 1084 (6th Cir. 1976) *cert. granted,* 50 L. Ed.2d 775 (1977). The Lawyers' Committee has also been directly involved in *Milliken* v. *Bradley,* 540 F.2d 229 (6th Cir. 1976) *cert. granted,* 97 S. Ct. 380 (1977) and *Pasadena City Board of Education* v. *Spangler,* 96 S. Ct. 2697 (1977).

Since 1971, the Lawyers' Committee through a grant from the Equal Employment Opportunity Commis-

sion has assisted the private bar in litigation under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e *et seq.*) on behalf of hundreds of injured individuals and class members. The Lawyers' Committee, through its Government Employment Project, its local committees, affiliates and volunteer lawyers is also actively engaged in providing legal representation to the victims of racially discriminatory employment practices of federal, State and local governments. *See, e.g., Chandler* v. *Roudebush,* 96 S.Ct. 1949 (1976); *Morrow* v. *Crisler,* 491 F.2d 1053 (5th Cir.), *cert. denied,* 419 U.S. 895 (1974); *Douglas* v. *Hampton,* 512 F.2d 976 (D.C. Cir. 1975).

In view of our continuing heavy involvement in school desegregation and Title VII cases, it is obvious that the issues which the petitioners seek to raise in their appeal in the instant case are of particular importance to the Lawyers' Committee. Should the Court hold, as petitioners contend, that it lies beyond the power of Congress to extend Title VII to State and local governments under the Enforcement Clause of the Fourteenth Amendment, a devastating blow would be dealt to the efforts being made to eradicate the effects of segregation in our nation's schools, including their faculties.

The interest of the *amicus curiae,* therefore, stems from our longstanding efforts to secure to black citizens their right under the Fourteenth Amendment to be free from discrimination based on race in all aspects of our national life.

The written consent of the parties, pursuant to Supreme Court Rule 42(2), is filed herewith.

STATEMENT OF THE CASE

This suit was filed by the Attorney General in the name of the United States on August 9, 1973, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e *et seq.* (1970), *as amended,* 42 U.S.C. Sec. 2000e *et seq.* (Supp. II, 1972), and the Fourteenth Amendment to the federal constitution, alleging that the Hazelwood School District, located in St. Louis County, Missouri, was practicing racial discrimination in hiring teachers and staff. Specifically, the government charged that, in hiring teachers, Hazelwood was pursuing a pattern or practice of racial discrimination that had its antecedents in *de jure* segregation that existed prior to 1955. The government contended that, long after the legal barriers had been struck down, Hazelwood persisted in refusing to employ black teachers who were as well or better qualified than white applicants who were hired instead. Injunctive relief was sought to put an end to discriminatory hiring practices and to require the district to recruit black faculty and staff, and further relief was sought to obtain back pay for the victims of past discrimination.

The Hazelwood School District occupies 78 square miles of territory and serves 25,000 students, mostly white, in five communities in northern St. Louis County. It is partially contiguous with the St. Louis City School District. The Hazelwood School District was created between 1949 and 1951 by consolidating thirteen rural school districts. Before 1955, Hazelwood employed no black faculty or staff. This reflected the fact that under state law the schools were segregated by race with respect to both faculty and students. Since the Hazelwood District did not have a resident black

population at that time, there was no black school and, consequently, no black faculty.

Hazelwood did not hire a black faculty member until 1969, although a 1964 policy adopted by the District proclaimed that teachers would be hired "on the basis of training, preparation and recommendations regardless of race, color or creed." In 1970-71, the number of black teachers had risen to six, constituting 0.6 per cent of the total teachers in the District. In 1972-73, 13 of 1,197 teachers, or 1.1 per cent, were black, and in 1973-74, Hazelwood employed 22 black teachers out of 1,231, or 1.8 per cent. In contrast, in 1970, over 15 per cent of the teachers in St. Louis City and County were black.

The low percentage of black teachers employed by Hazelwood reflected hiring practices which had long been biased in favor of whites. Although there were two predominantly black colleges in Missouri, Harris Teachers College and Lincoln University, Hazelwood did not recruit from them but instead sought to attract graduates from predominantly white colleges and universities in Missouri, Illinois, Arkansas, Kansas and Oklahoma. Hazelwood did not recruit from black colleges in other states. As late as the 1962-63 school year, some teacher application forms still had a space for "race" and in 1962 Hazelwood placed an advertisement in a Jackson, Mississippi newspaper for elementary and kindergarten teachers, limiting applicants to "white only."

The procedures for hiring faculty members are totally deficient in objective standards, thus enhancing the opportunity for racially based decisions to be made. Applications are kept on file at the central personnel

office. Applicants are instructed to update their forms annually, and applications not kept current are discarded. When vacancies occur, the personnel office notifies applicants selected from the file and advises them to arrange an interview with the appropriate principal.

The hiring procedure is in three steps: first, the applicants meet as a group with Hazelwood's elementary or secondary school coordinator, who familiarizes them with the district. Next, each applicant is interviewed by the principal. Thirdly, the principal makes a recommendation to the coordinator, who makes a recommendation to the Superintendent. Ordinarily, the principal's choice is followed. All of the elementary and secondary principals are white. There are no standards to govern the principal's choice except a general instruction to hire "the most competent person."

Evidence was presented concerning 55 black teachers who had unsuccessfully sought positions at Hazelwood, and 25 of them testified at trial. This testimony established that black applicants were advised frequently that there were no vacancies in their field, after which white applicants for the same position were hired. *United States* v. *Hazelwood School District,* 534 F.2d 805, 814-15 (8th Cir. 1976). While Hazelwood had a policy of giving preference to teachers who had previously taught in the system, this policy was not followed with respect to some black applicants. Black applicants were denied employment on the ground that they lacked certification, even though it was common practice in the District to hire recent graduates on the understanding that they would obtain certification. 534 F.2d at 809 n.2. Often, black applicants were not given any interviews at all, although an interview

was a necessary predicate to employment. 534 F.2d at 809 n.3.

The district court held that the government had failed to establish a "pattern and practice" of discriminatory hiring practices under Title VII or the Fourteenth Amendment. The court held that the percentage of black teachers was roughly comparable with the percentage of black students in the Hazelwood District. The court also held that the record did not support claims by 55 unsuccessful black applicants for teaching positions that they had been discriminated against on the basis of their race. *United States* v. *Hazelwood School District,* 392 F. Supp. 1276 (E.D. Mo., 1975).

The Court of Appeals reversed, one judge dissenting. *United States* v. *Hazelwood School District,* 534 F.2d 805 (8th Cir. 1976). The majority found that the trial court had erred in failing to assign appropriate weight to the evidence adduced by the government concerning Hazelwood's prior hiring practices which was "highly relevant to show that present policies or practices which appear neutral on their face, perpetuate past discriminatory policies." *Id.* at 811. The Court also held that the district court erroneously compared the percentage of black teachers in Hazelwood with the percentage of black students in the schools rather than with the percentage of black teachers in the relevant labor market—St. Louis City and County.

The combination of the statistical evidence, the hiring practices which gave almost total discretion to the 23 school principals (all of whom were white), the past pattern of employment discrimination, and the Court's finding that 16 black applicants had been de-

nied employment based on race, led the Court to conclude that the government had established a *prima facie* case of a pattern or practice of employment discrimination in violation of Title VII which had not been adequately rebutted by the State.

In a separate discussion, headed "III" in its opinion, the Court of Appeals examined the record concerning claims of discrimination by specific individuals and concluded on the basis of the individual facts of each case that the government "proved unlawful discrimination against 16 rejected black applicants." 534 F.2d at 819.

The Court of Appeals instructed the district court on remand to enter an order enjoining Hazelwood (1) from discriminating against any applicant for a teaching position on the basis of his race or color; (2) to promulgate accurate job descriptions and hiring criteria to ensure that all applicants are judged on the basis of individual merit; (3) to announce its hiring procedures in application and recruiting materials; (4) to ensure that notice of all available openings be given to all potential applicants, that black colleges be included in any future recruitment activities, and that black college students be given the opportunity to student teach at Hazelwood; (5) to maintain records to facilitate government inspections as well as to prepare periodic reports for the Justice Department for a three year period; and, (6) to give the sixteen applicants found by the Court to have been discriminated against, preferential standing and the right of first refusal of any vacancies to which their qualifications would entitle them. The Court also ordered back pay awards for two applicants and directed the district court to determine whether back pay should not be awarded to fourteen others.

SUMMARY OF ARGUMENT

I.

It is unnecessary to address the constitutional argument which the petitioners seek to raise because the record is replete with evidence of purposeful discrimination. Through misrepresentation, selective applications of its own hiring policies, and utilization of a system that gave maximum leeway for preferential hiring, Hazelwood ensured that qualified black applicants would not be employed. Petitioners' claim that the Court of Appeals' ruling that 16 specific individuals were discriminated against was predicated on the court's finding of a pattern of discrimination is simply a misreading of the Eighth Circuit's opinion. The Court reached its conclusion concerning these individuals on its examination of the facts in each individual case and nothing else. Nor does petitioners' claim that applicant-flow statistics demonstrate that the 16 individuals could not have been the subjects of discrimination withstand analysis. The record does not establish race-identification of applicants for the years in question. In any event, failure to discriminate against *some* blacks is not a conclusive defense to a claim of discrimination against other blacks, and the petitioners did not offer any rebuttal evidence concerning the individuals in question. 534 F.2d at 814.

II.

Assuming the court reaches the constitutional question, it is a valid exercise of Congressional power under the Enforcement Clause of the Fourteenth Amendment to make Title VII's prohibition of practices which have a disproportionately adverse racial

impact, even if not purposeful, applicable to State and local governments. This result is commanded by this court's decisions in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), and *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). The legislation is adapted to carry out the objects of the Fourteenth Amendment and tends to enforce compliance with the prohibitions they contain. The extension of Title VII to State and local governments is designed precisely to achieve this result. The legislative history of the Equal Employment Opportunity Act of 1972, P.L. 92-261, 86 Stat. 103, contains an adequate factual basis for Congress' action in expanding the reach of Title VII.

ARGUMENT

I. HAZELWOOD'S CONSTITUTIONAL ARGUMENT SHOULD NOT BE REACHED BECAUSE THERE IS SUBSTANTIAL EVIDENCE OF PURPOSEFUL RACIAL DISCRIMINATION IN ITS TEACHER HIRING PRACTICES

The record substantiates the Court of Appeals' finding that Hazelwood has engaged in purposeful discrimination in the selection of black applicants to interview, and in the selection of black interviewees to hire. For example, the school district had admittedly engaged in extensive recruiting efforts at predominantly-white colleges, but had refused to do so at predominantly-black colleges. The testimony of the man who served as its Superintendent of Schools from July 1953 through June 1967 is instructive:

Q. Did you ever recruit at Lincoln University?

A. I never did recruit at Lincoln University.

Q. For what reason?

A. In the early years of my superintendency that was a Negro university.

App. 54-55.[1]

The Court of Appeals also discussed instance after specific instance in which the Hazelwood school district treated black applicants for teaching positions in a manner both different from, and less favorable than, the manner in which it treated white applicants. In some instances Hazelwood used inconsistent standards, as when it disqualified blacks for "reasons" which were equally applicable to whites, but which did not result in whites being barred from employment. In other instances, the school district's unfavorable treatment of black applicants violated its own policies. In still others, the school district's favorable treatment of whites resulted in a waiver of some of the few objective criteria it claims to have recognized. In none of these types of instances did the school district offer any explanation for its different treatment of black and white applicants; in none did it produce any evidence that might prove a lack of purposeful racial discrimination, such as evidence that some white applicants were disqualified for reasons which did not bar the employment of blacks, or evidence that Hazelwood violated its own policies in any assertedly unfavorable treatment of any white applicant, or evidence that it ever waived any of its objective criteria in favor of any black applicant.

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[1] In its brief at 11, the school district makes much of a single visit of a subordinate official to Lincoln University thirteen or fourteen years ago, but the school district's claim that black students were uninterested in it is somewhat thin; its "recruiter" failed to speak to a single black student. 534 F.2d at 811 Note 6.

The Court of Appeals pointed out that Hazelwood misrepresented to Derek Novel, a black, that there were no vacancies in the type of teaching position for which he had applied, that it then hired ten later-applying applicants for the assertedly nonexistent vacancies in that type of position, that five of the persons so hired had qualifications inferior in whole or in part to Novel's, that one of the successful applicants "had even been dismissed from his university on the basis of his grades," and that Hazelwood offered no explanation of these facts. 534 F.2d at 814-15. The school district has not challenged, or even mentioned, this statement by the Court of Appeals in its brief before this Court.

Also, the Court of Appeals pointed out that Hazelwood had a policy of giving preference to applicants who had successfully done their student teaching in that district,[2] but did not apply this policy to Robert Howell, a black applicant. The Court of Appeals pointed out that Hazelwood had not even bothered to interview Howell, that subsequent to his application it had hired ten whites for the type of teaching position for which he had applied, that nine of the ten successful white applicants had no more experience than Howell, and that Hazelwood offered no explanation of these facts. 534 F.2d at 815. The school district's only rejoinder to this Court is its assertion, in its brief at 69, that there were only nine successful white applicants and that the remaining one person was black.

In addition, the Court of Appeals pointed out that Alice Roach, a black teaching applicant, had assertedly been disqualified because she lacked teaching certification at the time she applied, but that Hazelwood had routinely hired white applicants who lacked teaching certifications at the time of their applications. 534 F.2d at 815. Indeed, plaintiff's exhibit 61 listed 101 Hazelwood teachers who lacked certifications at the time of their applications, and shows that over half of them did not have teaching certificates even at the time Hazelwood made its job offers to them. App. 429-31. The Court of Appeals noted that Hazelwood had offered no explanation for the application of a different standard to Alice Roach, 534 F.2d at 815-16, and the district remains silent in its brief before this Court.

[2] 534 F.2d at 815. The district court had also found this to be Hazelwood's policy. 392 F.Supp. at 1281.

The above situations were not unique; the Court of Appeals pointed out that Hazelwood has misrepresented to several black applicants the nonexistence of openings which in fact did exist, in addition to the "several" misrepresentations it made to Derek Novel, 534 F.2d at 815; such misrepresentations were made to James Washington, 534 F.2d at 815, to Samuel Downs, *Id.*, and to Cynthia Edmond, 534 F.2d at 816. Only as to Cynthia Edmond does the school district now deny misrepresentation, in its brief at 69, and even that denial is based on an interpretation of her trial testimony which is not the only possible interpretation. The Court of Appeals similarly pointed out the school district's pretextual reliance on the lack of teaching certificates at the time of application for several black applicants, despite Hazelwood's waiver of such requirements for whites; besides Alice Roach, the petitioner relied on this pretext as to Delores Penten, 534 F.2d at 816, Georgia Shaw, 534 F.2d at 816-17, Alexis Smith, 534 F.2d at 817, Geraldine Thomas, *Id.*, Mary Wilson, *Id.*, and Robert Wilson, 534 F.2d at 818. Moreover, as the Court of Appeals observed, the school district violated its own

policy of giving preference to applicants who had successfully done their student teaching in the Hazelwood district in the case of Georgia Shaw, *Id.*, as well as that of Robert Howell. 534 F.2d at 815.

The school district asserts, in its brief at 72, that none of the above disputed facts matters because *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802 (1973) requires a showing that the applicant is "qualified," that only a personal meeting with a Hazelwood principal can determine whether an applicant is "qualified," and that the applicant's "self-serving recitations as set forth in their written applications" are insufficient to show that they were "qualified." The assertion is untenable; if it were otherwise, a school district could refuse to hire a single black and could escape liability by the simple expedient of refusing to give blacks the opportunity for an interview.

The school district also argues, in its brief at 62, that the undisputed facts discussed by the Court of Appeals are in some unexplained way "tainted" by a "prior error-infected finding of a pattern or practice of discrimination." In point of fact, the Court of Appeals never once relied on its findings of such a pattern in discussing the undisputed evidence of discrimination against sixteen black applicants. Indeed, the Court of Appeals may have erred in *failing* to use the finding of a pattern to shift the burden to Hazelwood with respect to the thirty-nine black applicants the Court of Appeals held not to have been discriminatd against, cf. *Franks* v. *Bowman Transportation Co.,* 424 U.S. 747, 772-73 (1976). In any event, a plain reading of the Court's decision establishes that its evaluation of the treatment the sixteen received was entirely independent of its other findings of discrimination.

Finally, Hazelwood relies on applicant-flow statistics to support its contention that, notwithstanding its disparate treatment of the sixteen black applicants discussed by the Court of Appeals, blacks as a whole fared better than whites and that this somehow disproves discrimination as to the sixteen. Brief for petitioners at 61-62. This argument has no factual basis in the record. Hazelwood's contention is based on the assumption that most of the black applicants have been race-identified, but the record is completely silent as to the number of applicants in the years in question who actually were race-identified. Moreover, the record does contain two indications that there were substantial numbers of persons whose race could not be identified. First, Hazelwood's applicant-flow contention is based on data for the total number of applicants for the 1971-72 and 1972-73 school years, brief at 8, 47-48, even though race-identification was impossible for the great bulk of the 3,127 applicants for the 1971-72 school year. The school district routinely destroyed most old applications and the district court stated that "the years for which the district had retained personnel records" were for the 1972-73 and 1973-74 school years. 392 F. Supp. at 1281.[3] Second, it is obvious from the means of race-identification used by the Government [4] that, even where application forms had been preserved, many blacks would not have

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[3] Hazelwood admits that most of the persons who were race-identified as black had applied in the years for which records were preserved. Brief at 8.

[4] The Government tried to race-identify applicants as black by determining whether they had attended local, predominantly-black schools, or had attended predominantly-black colleges and universities, or from optional photographs some persons had included with their applications. Tr. 306-07.

been race-identified. It is probable that some blacks in the local area had not attended predominantly-black schools. Furthermore, this means of racial identification was not even used for non-local applicants and plaintiff's exhibit 2 shows that roughly one third of Hazelwood's applicants were not local. The next means of racial identification, relying on attendance at predominantly-black colleges and universities, would have failed to identify the race of blacks who did not attend such schools. According to the Institute for the Study of Educational Policy at Howard University, only 23 percent of black college students in the Fall of 1973 were enrolled in predominantly-black colleges and universities. Institute, *Equal Educational Opportunity for Blacks in U.S. Higher Education: An Assessment* (1976) at p. 56. The conclusion is inescapable that this means of race identification would have failed to work on three-quarters of the black applicants. The next means of racial identification, reliance on photographs, was insufficient because the school district had not required photographs since 1954, 392 F. Supp. at 1280. Finally, the school district's applicant-flow contention is weakened by its reliance on hiring data for the period of time after it learned that the Government was contemplating suit against it.

There is a legal, as well as a factual, defect in Hazelwood's effort to rebut the individual showings of discrimination by reliance on applicant-flow data. An employer's failure to discriminate against *some* blacks is, while relevant, not a conclusive defense to a claim of discrimination against *other* blacks. "A single invidiously discriminatory governmental act . . . would not necessarily be immunized by the absence of such discrimination in the making of other comparable deci-

sions." *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, —— U.S. ——, 50 L.Ed. 2d 450, 465 note 14 (1977). In case after case, the Courts of Appeal have held that the right to freedom from employment discrimination is personal to each victim of such discrimination, and that fair treatment of other blacks, even the hiring of blacks in proportion to their number in the applicant flow or in the local population or work force, is not dispositive of the claim of the person actually discriminated against. *Franklin* v. *Troxel Mfg. Co.*, 501 F.2d 1013, 1016 (6th Cir., 1974); *Mims* v. *Wilson*, 514 F.2d 106, 109 note 5 (5th Cir, 1975); *Patterson* v. *American Tobacco Co.*, 535 F.2d 257, 275 note 18 (4th Cir.), *cert. den.*, —— U.S. ——, 50 L.Ed.2d 286 (1976).

While it is important to note that each of the sixteen instances of individual discrimination cited by the Court of Appeals meets the *McDonnell Douglas* standards for shifting to the employer the burden of proving nonracial motivation for the disparate treatment of black applicants, it is equally important to note that the undisputed evidence of record as to these sixteen also meets the *Arlington Heights* standards for inferring discriminatory motivation in the absence of an admitted discriminatory intent. These sixteen instances involve "[d]epartures from the normal procedural sequence", include showings that "the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached", 50 L.Ed. 2d at 466, and involve a series of questionable actions rather than a few facts taken in isolation, cf. 50 L.Ed. 2d at 465. The school district's haphazard and subjective decisionmaking is more readily analogous to jury selection than it is to governmental decision making,

e.g., on the adoption of an employment test or on the acceptance or location of public housing. Thus, discriminatory purpose may be inferred more readily in the case at bar than in cases such as *Washington* v. *Davis,* 426 U.S. 229 (1976) or *Arlington Heights.* This Court so recognized in *Washington,* 426 U.S. at 244-245, and in *Arlington Heights,* 50 L.Ed.2d at 465 note 13.[5]

Notwithstanding the school district's protestations, brief at 22, it is always open to a public or private employer to prove a nonracial motivation for the actions under challenge. There may be nonracial reasons, for example, which explain why a school district would refuse to abide by its policy to interview an applicant who had successfully done his or her student teaching in that district. Nevertheless, a court of law cannot decide such a case on the basis of speculation. If there were a nonracial explanation in any of these sixteen instances, the burden of persuasion was with the school district. And Hazelwood did not even try to make such showings. Instead, throughout this litigation it has acted as if the Government had the threshold burden of proving specific racial motivation for the actions of the district's officials. Perhaps the clearest indica-

[5] *Cf. Newman* v. *Henderson,* 539 F.2d 502, 505 (5th Cir., 1976), a Fourteenth Amendment jury case in which the court interpreted this passage in *Washington* as distinguishing between a governmental selection process such as a test, which separates the qualified from the unqualified and in which proof of discriminatory purpose is required to show that the process distinguishes on the basis of race rather than on the basis of nonqualification, and a governmental selection process which merely picks some individuals from among a group of qualified persons. Where there is no competing inference of nonqualification, *Newman* held proof of discriminatory impact is tantamount to proof of discriminatory purpose.

tion of this flaw in Hazelwood's approach lies in its discussion of its failure to interview or to hire a strikingly well-qualified applicant, Georgia Shaw:

> The latter case, that of Miss Shaw, may be puzzling on the face of things—*one wishes that she had testified*—but it is not without more the basis for a finding of discriminaton.

Brief for petitioners at 71 (emphasis supplied). It is factually clear, however, that only Hazelwood can explain its reasons for its rejection of her for even an interview, and it is legally clear that Hazelwood's decision to stand mute on this claim, as on the others, itself supports the inference that both she and the others were deliberately rejected on racial grounds. This evidentiary principle is both old and basic. Over two hundred and seventy years ago, the Court of Queen's Bench articulated it:

> . . . [B]ut if very slender evidence be given against him, then, if he will not produce his books, it brings a great slur upon his cause.

Ward v. *Apprice,* 6 Mod. 264, 87 Eng.Rep. 1011 (Q.B., 1705). Professor Wigmore has stated that the failure or refusal to produce a relevant document "is evidence from which alone its contents may be inferred to be unfavorable to the possessor. . . ." 2 J. Wigmore, *A Treatise on the Anglo-American System of Evidence,* § 291 at p. 187 (3rd Ed., 1940). *See also* 2 Conrad, *Modern Trial Evidence,* § 960 at p. 169 (1956). This Court noted in *Interstate Circuit Inc.* v. *United States,* 306 U.S. 208, 221 (1939), that it is usual, in cases of alleged unlawful agreements to restrain commerce, that "the government is without the aid of direct testimony that the distributors entered into any agreement", and that to

establish agreement "it is compelled to rely on inferences drawn from the course of conduct of the alleged conspirators." Following the same principle laid down over two hundred years earlier in *Ward* v. *Apprice*, this Court then held that the antitrust defendants' failure to call knowledgeable witnesses:

> . . . is itself persuasive that their testimony, if given, would have been unfavorable to appellants. The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. . . . Silence then becomes evidence of the most convincing character.

As a general proposition, Hazelwood's assertion in its brief that teacher selection involves an element of discretion which will inevitably reflect the application of subjective criteria, states a reality with which few would probably quarrel. However, the rubric of "subjective criteria" cannot be used to mask racially discriminatory hiring practices. In the context of teaching, differences in philosophy might be a valid criterion for hiring an applicant. Skin color is not. Hazelwood has totally failed to provide an adequate nonracial explanation for its disparate treatment of its black and white applicants.[6]

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[6] A few limited examples from the record will suffice to demonstrate Hazelwood's casual treatment of this crucial issue. Hazelwood's Coordinator of Secondary Education testified:

> Q. Well, are there subjective standards also?
> A. No, our intangibles are personal.
> Q. What would they be?
> A. My gosh. You could list many. I mentioned some, voice articulation, attitude that the person might detect towards kids, towards teaching. You could just go on and on, and say that I might see or you might see some things different from me, and you and I are sitting across the table from each other, and you shake hands with each other. You can begin to evaluate things the way you grab a man's hand, tells me something, and from that point on I begin to look at you from a personal point of view.

App. 50-51. The Superintendent of the Hazelwood district testified:

> Q. Has Hazelwood ever conducted any analysis of the various teaching jobs to see what qualifications should be required for each one?
> A. No.
> Q. Has Hazelwood ever conducted any studies to make sure that its practices, procedures and standards result in the employment of the best qualified teachers?
> A. We have no standards, but we have not conducted any studies along this line.

App. 61. The result of this abdication of the school district's responsibilities is predictable: each hiring official does whatever he wants, free of any realistic constraint against making improper —or racially biased—decisions. The Court of Appeals singled out compelling testimony by a principal as to the scope of his discretion: it "was like dating a girl, some of them impress you, some of them don't." 534 F.2d at 812. Another testified:

> Q. Have they explained to you what is meant by best qualified?
> A. It's a feeling that a principal has, when he has been in charge of a building, we don't have a barometer to set someone up by.

App. 65.

The relief ordered by the Court of Appeals is carefully tailored and amply justified by the school district's purposeful discrimination in interviewing and in hiring black teachers, and in limiting its past recruitment efforts to whites. The Court of Appeals did not abolish Hazelwood's use of subjective criteria, but merely required that the subjective standards it desires to use be made publicly known and be fairly applied. The Court of Appeals did not require any recruiting, but merely required that there be no discrimination in whatever recruiting Hazelwood decides to do. No aspect of relief is dependent on any showing of unintentional discrimination. There is therefore no occasion for this Court to reach the constitutional question.

II. IN THE EVENT THAT THE CONSTITUTIONAL QUESTION IS REACHED, THE EXTENSION TO STATE AND LOCAL GOVERNMENTS OF TITLE VII'S PROHIBITION OF PRACTICES WHICH HAVE A DISPROPORTIONATELY ADVERSE RACIAL IMPACT BUT WHICH ARE NOT THE RESULT OF A DISCRIMINATORY PURPOSE IS A VALID EXERCISE OF CONGRESSIONAL POWER UNDER THE ENFORCEMENT CLAUSE OF THE FOURTEENTH AMENDMENT.

The distinguishing feature of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, is its prohibition of practices which have a disproportionately adverse impact on a group and which are not justified by business necessity, regardless of the presence or absence of discriminatory purpose. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 432 (1971); *Washington* v. *Davis, supra,* 426 U.S. at 246-7; *General Electric Co.* v. *Gilbert,* —— U.S. ——, 50 L.Ed.2d 343, 354-55 (1976).

The question Hazelwood seeks to have this Court decide is whether the Enforcement Clause of the Fourteenth Amendment[7] authorized Congress to accomplish the Amendment's purpose of ending racial discrimination by States through a means which proscribes some actions additional to those directly proscribed by the Amendment itself. *Amicus* urges that the answer is in the affirmative.

The scope of the powers granted by the Enforcement Clauses of the Civil War Amendments is well illustrated by reference to the legality of literacy tests for voter registration. In *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 51-53 (1959), this Court held

[7] Section 5 of the Amendment states:

> 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

unanimously that, absent proof of discriminatory purpose or of discriminatory administration, North Carolina's literacy test for voting did not violate the Fourteenth or Fifteenth Amendments:

> Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.
>
> Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. No such influence is charged here. On the other hand, a literacy test may be unconstitutional on its face. In *Davis* v. *Schnell,* 81 F.Supp. 872, *aff'd* 336 U.S. 933, 93 L.Ed. 1093, 69 S.Ct. 749, the test was the citizen's ability to "understand and explain" an article of the Federal Constitution. The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy. We cannot make the same inference here. The present requirement, applicable to members of all races, is that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language." That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot.

Then the Voting Rights Act of 1965 was passed, and Congress suspended *all* literacy tests in the areas covered by the Act, based upon evidence of discriminatory purpose or discriminatory administration in *some* areas. § 4(a) of the Act, 79 Stat. 438. When this provision was challenged, this Court held that an across-the-board suspension, even without prior adjudication of a particular test's invalidity because of discriminatory purpose or discriminatory administration, was appropriate legislation to "enforce" the Fifteenth Amendment. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 333-34, 337 (1966).

The ban on literacy tests was extended nationwide by § 201 of the Voting Rights Act Amendments of 1970, 84 Stat. 315, 42 U.S.C. § 1973aa. Under this amendment, no State or political subdivision of a State could escape the ban by showing that it had never discriminated in voting, and that it had never used any "test or device" in a discriminatory manner or with a discriminatory purpose. Despite the legality of such literacy tests under the Fourteenth and Fifteenth Amendments in areas, such as Arizona, which had never discriminated or tried to discriminate, this Court unanimously upheld the new right declared by Congress under the Enforcement Clause of these Amendments. *Oregon* v. *Mitchell,* 400 U.S. 112, 118 (1970).

The impact of the Enforcement Clause power upon the scope of the Fourteenth and Fifteenth Amendments rights is clear. In an area which the Court had refused to enter because of the limitations on its power to define violations of the Civil War Amendments, the Enforcement Clause gave Congress the power both to define new rights and to provide new means of effectuating old rights, in order to protect the underlying constitutionally declared right to freedom from discriminatory obstacles to voting. Similarly, it is clear that not every new voting procedure in a State which had formerly discriminated in voting would contravene the Fourteenth and Fifteenth Amendments, but this Court has held that Congress had the power under the Enforcement Clauses to suspend such new procedures and to make them unlawful unless the State carries the burden of showing that the changes will have *neither* the purpose *nor the effect* of discrimination in voting. *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 334-35.

From the beginning, the Enforcement Clauses of the Civil War Amendments have been held to invest Congress, the branch of government expressly entrusted with their enforcement, with the authority both to create new rights serving the general purposes of the Amendments, and to create new remedies to effectuate those rights. To enforce the prohibition of "involuntary servitude" in the Thirteenth Amendment, Congress had the power to enact the anti-peonage statute, 14 Stat. 546, 18 U.S.C. § 1581, which extended the definition of Thirteenth Amendment rights to include compulsory service to secure the payment of a debt, and extended the remedy for their violation by providing criminal sanctions. *Clyatt* v. *United States,* 197 U.S. 207, 218 (1905). To enforce the prohibitions of the Fourteenth Amendment, Congress had the power to enact § 4 of the Civil Rights Act of 1875, 18 Stat. 336, 18 U.S.C. § 243, which extended the definition of Fourteenth Amendment rights to include the right to freedom from racial discrimination in service on grand juries and trial juries, and provided the remedy of

criminal sanctions, and the remedy of removal, for such violations. *Ex parte Virginia,* 100 U.S. 339 (1880); *Strauder* v. *West Virginia,* 100 U.S. 303 (1880). This Court had not itself defined the scope of Thirteenth and Fourteenth Amendment rights to include such matters at the time Congress enacted these provisions, and it could certainly never have provided the remedies discussed above.

Congress, therefore, clearly has the power under the Enforcement Clause to define rights under the Fourteenth Amendment which go beyond those independently guaranteed by the Amendment; it clearly has the power to alter and shift the burden of proof required to establish a violation of the rights secured by the Amendment; and, it has the power to create new remedies, of a kind different from that which the courts themselves could create for their violation.[8]

[8] Hazelwood contends that a rule giving Congress the authority "to give substantive, as opposed to remedial implementation" to Fourteenth Amendment rights, *cf. United States* v. *Guest,* 383 U.S. 745, 754-55 (1966), may also have the undesirable effect of allowing Congress to restrict existing judicially-declared rights under the Amendment. Brief at 31, 35.

Unlike the congressional power to "regulate" interstate commerce which includes the power to grant or withhold protection of such commerce, *State Bd. of Insurance* v. *Todd Shipyards Corp.,* 370 U.S. 451, 456-57 (1962), the congressional power under the Civil War Amendments is only "to enforce" them. *Katzenbach* v. *Morgan,* 384 U.S. 641, 651 note 10 (1966); *Oregon* v. *Mitchell, supra,* 400 U.S. at 249 note 31 (Brennan, J. joined by White, J., and Marshall, J.), 400 U.S. at 287 (Stewart, J., joined by Burger, C.J., and Blackmun, J.) and 400 U.S. at 128-29 (Black, J.). This Court previously addressed the same question with respect to the Eighteenth Amendment, and held that the concurrent power of Congress and of the States to enforce that provision does not enable them "to defeat or thwart the prohibition, but only to enforce it by appropriate means." *Rhode Island* v. *Palmer,* 253 U.S. 350, 387 (1920). *Accord, McCormick & Co., Inc.* v. *Brown,* 286 U.S. 131, 143-44 (1932).

The only remaining question is whether the particular Congressional action in question is appropriate under the Fourteenth Amendment. In essence, does the legislation conflict with an express prohibition in the Constitution, is the legislation "adapted to carry out the objects the amendments have in view", and does it "tend[s] to enforce submission to the prohibitions they contain." *Ex parte Virginia, supra,* 100 U.S. at 345-46. *Accord, McCulloch* v. *Maryland,* 17 U.S. (4 Wheat.) 315, 421 (1819); *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 326; *Katzenbach* v. *Morgan, supra,* 384 U.S. at 650; *Jones* v. *Alfred H. Mayer Co.,* 392 U.S. 409, 443 (1968). *Cf. James Everard's Breweries* v. *Day,* 265 U.S. 545, 559 (1924).

The holding of *Washington* v. *Davis* that purposeful discrimination is a required element of a Fourteenth Amendment violation did not purport to create a constitutional right in a State to freedom from all judicial inquiry as to its employment practices in the absence of such a showing. It merely stated a limit to judicial enforcement of the Amendment in the absence of action by the branch of government the Amendment had designated as primarily responsible for its enforcement. *Compare Lassiter, supra,* and *South Carolina* v. *Katzenbach, supra.*

On its face, the extension of Title VII to State and local governments is adapted to carry out the objects of the Fourteenth Amendment and to enforce submission to its prohibition against discrimination. In evaluating the propriety of the "inventive manner" in which Congress exercised its authority to end purposeful discrimination in voting by broadly prohibiting practices shown to have had a disparate racial impact

in some particular situations, this Court held that such legislative action was permissible where Congress had a sufficient factual basis for deciding that there was a problem of sufficient scope to warrant its intervention. *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 327, 329-31. *Accord, Katzenbach* v. *Morgan, supra,* 384 U.S. at 654-56; *Oregon* v. *Mitchell, supra,* 400 U.S. at 132-33 (Black, J.). In *South Carolina* v. *Katzenbach,* this Court held that "Congress . . . may avail itself of information from any probative source", and held that studies of the U.S. Commission on Civil Rights were such a probative source. 383 U.S. at 330.

The legislative history of the Equal Employment Opportunity Act of 1972, Pub.L. 92-261, 86 Stat. 103, clearly shows a sufficient factual basis for the extension of Title VII to local and State governments. The U.S. Commission on Civil Rights had issued a report in 1969, ***For All the People . . . By All the People: A Report on Equal Opportunity in State and Local Government Employment***, which found extensive employment discrimination by state and local governments, both of the purposeful type exemplified by the case at bar and of the type involving objective, facially neutral requirements adopted in good faith but having a disproportionately adverse effect on blacks,[9] and concluded by

[9] The Commission's findings stated in part:

BARRIERS TO EQUAL OPPORTUNITY

4. State and local government employment opportunities for minorities are restricted by overt discrimination in personnel actions and hiring decisions, a lack of positive action by governments to redress the consequences of past discrimination, and discriminatory and biased treatment on the job.

(a) A merit system of public personnel administration does not eliminate discrimination against members of minorities. It proclaims objectivity, but does not assure it. Discrimination occurs both in recruiting and in selection among final applicants.

(b) Governments have undertaken few efforts to eliminate recruitment and selection devices which are arbitrary, unrelated to job performance, and result in unequal treatment of minorities. Further, governments have failed to undertake programs of positive action to recruit minority applicants and to help them overcome barriers created by current selection procedures.

(c) Promotional opportunities are not made available to minorities on an equal basis by governments that rely on criteria unrelated to job performance and on discriminatory supervisory ratings.

For All the People at 119. Its Conclusion made the same point at 131-32.

recommending the elimination of the exemption of State and local governments from the coverage of Title VII. *Id.* at 128. The Senate Committee Report expressly relied on this report, and cited its references to forms of discrimination not involving discriminatory purpose:

> The report's findings indicate that the existence of discrimination is perpetuated by both institutional and overt discriminatory practices, and that past discriminatory practices are maintained through *de facto* segregated job ladders, invalid selection techniques, and stereotypical misconceptions by supervisors regarding minority group capabilities. The study also indicates that employment discrimination in State and local governments is more pervasive than in the private sector.

S.Rep.No. 92-415 (92nd Cong., 1st Sess.) at 10. The House Committee Report was substantially similar, H. Rep.No. 92-238 (92nd Cong., 1st Sess.) at 17, 1972 *U.S. Code Cong. & Admin. News* 2137, 2152.

Under the standards established by this Court since the passage of the Civil War Amendments, the exten-

sion of Title VII to State and local governments was appropriate legislation under the Enforcement Clause of the Fourteenth Amendment.

CONCLUSION

The judgment of the United States Court of Appeals for the Eighth Circuit should be affirmed.

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Supreme Court, U. S.
FILED
APR 2 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR THE NATIONAL EDUCATION ASSOCIATION AS AMICUS CURIAE

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April 2, 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE

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OCTOBER TERM, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR THE NATIONAL EDUCATION ASSOCIATION AS AMICUS CURIAE

INTEREST OF AMICUS [1]

The National Education Association ("NEA") is an independent, voluntary organization of educators, open to any person who is actively engaged in the profession

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[1] The parties have consented to the filing of this brief and their letters of consent have been tendered to the Clerk of the Court pursuant to Rule 42(2) of the Rules of this Court.

of teaching or other educational work, or any person interested in advancing the cause of education. NEA presently has more than 1,500,000 regular members and is the largest professional organization in the nation. Pursuant to the terms of its charter, 34 Stat. 805 (1906), NEA's purpose is "to elevate the character and advance the interest of the profession of teaching, and to promote the cause of education in the United States."

In pursuit of these goals, NEA has supported school desegregation in the North and South and to that end has submitted briefs amicus curiae in such cases as *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969); *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971); *Keyes* v. *School District No. 1, Denver,* 413 U.S. 189 (1973); *Richmond School Board* v. *State Board of Education,* 412 U.S. 92 (1973); and *Milliken* v. *Bradley,* 418 U.S. 717 (1974).

The instant case is of particular concern to NEA because petitioners' arguments, if accepted by the Court, would deny to most teachers and prospective teachers the protections that Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e *et seq.*, affords to persons who are not public employees. Furthermore, petitioners' arguments, if accepted, would necessarily lead to an unduly narrow construction of Congress' power, pursuant to the Commerce Clause and Section 5 of the Fourteenth Amendment, to legislate on matters affecting public education and the rights of public employees.

ARGUMENT

I. INTRODUCTION AND SUMMARY

This case arises from a school district in St. Louis County, Missouri, that was segregated by law prior to *Brown* v. *Board of Education,* 347 U.S. 483 (1954). Thereafter, by various means including racially discriminatory advertising and other forms of discriminatory recruiting, the school district maintained an all-white faculty until the fall of 1969. In hiring matters, the school district entrusted virtually absolute discretion to its all-white staff of 23 principals who in turn utilized their own brands of vague and highly subjective hiring criteria. These procedures and criteria produced a dynamic process whereby vacancies vanished when eligible black candidates appeared and then materialized again for eligible white candidates and qualifications deemed essential for black candidates, became inoperative for white candidates. (*See,* pp. 9-11 *infra*).

As we show in Part II of this brief, this case is a garden variety example of purposeful racial discrimination against black candidates for teaching positions. The district court was required to consider the evidence of racial discrimination in its totality, but failed to do so. The court of appeals considered the totality of the evidence and concluded that the Government had established a prima facie case of a pattern or practice of purposeful discrimination. In this respect, the court of appeals was careful to make clear that while the statistical evidence provided "indications" or inferences of racial discrimination, the Government's prima facie case was bottomed on "actual" discrimination as well (Pet. App. 14b).[2] Because the record and the court of

[2] The opinions of the district court and the court of appeals are

appeals' opinion demonstrate that the Government proved a pattern or practice of purposeful discrimination, this Court should affirm the decision below without reaching the other issues in the case.

In Part III, we show that Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as interpreted by *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), provides a second ground for affirming the decision of the court of appeals. This alternative ground is not dependent on proof of purposeful discrimination. Title VII bars "built-in headwinds" against the employment opportunities of minority groups unless they are justified by evidence of business necessity. A showing by the employer of good faith or benign intent, standing alone, will not suffice. The evidence in the record shows that the unwritten, vague and highly subjective criteria applied by Hazelwood's all-white staff of principals serve as built-in headwinds to minority applicants. The record also shows that Hazelwood introduced no evidence tending to show that its criteria and procedures are justified either by business necessity or even by sound business reasons.

In Part IV, we address petitioners' contention that neither the Commerce Clause nor Section 5 of the Fourteenth Amendment authorizes Congress to extend Title VII to state and local public employees. To ascertain whether Title VII, as amended, may be sustained on the basis of the Commerce Clause, this Court must

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printed in the appendix to the petition for certiorari and are cited herein as "Pet. App." followed by the page reference. Petitioners' brief on the merits is cited as "Br." The Joint Appendix is cited as "JA." Our citations to testimony not printed in the Joint Appendix consist of the witness' name followed by the appropriate page of the deposition or trial transcript.

weigh the federal interests protected by Title VII against the impact of that statute on state sovereignty. *National League of Cities* v. *Usery*, 426 U.S. 833 (1976). As we show, the balance in this case should be struck in favor of the amendments to Title VII for the statute, as applied in this case, does not significantly infringe upon legitimate state interests, and the federal interests secured by the statute are substantial.

Likewise, the Court should reject petitioners' arguments concerning Section 5, which would narrowly restrict the ability of Congress to give effect to the great purposes of the Fourteenth Amendment. In *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), this Court held that Congress may, under the enforcement clause of the Fourteenth Amendment, prohibit state conduct—the administration of literacy tests—that was not prohibited by the Amendment itself. The Court said that the relationship between the legislation in issue and the Fourteenth Amendment was sufficient because Congress could have concluded that the ban on literacy tests would help remedy discrimination in the provision of public services. In the case at bar, Congress actually determined to bar the use of unnecessary barriers to minority employment because, *inter alia*, such barriers perpetuate the effects of past discrimination against minority groups and because the elimination of those barriers to public employment would contribute to the nondiscriminatory provision of government services.

In sum, if this Court determines to review the constitutionality of Title VII insofar as it prohibits state conduct in the absence of proof of purposeful discrimination—even though such proof was adduced in this case—then the Court should sustain Title VII as an

appropriate exercise of the legislative powers conferred by the Commerce Clause and the Fourteenth Amendment.

II. THERE IS NO NEED FOR THIS COURT TO REACH THE CONSTITUTIONAL ISSUES PRESENTED BY PETITIONERS BECAUSE THEIR HIRING PRACTICES WERE SHOWN TO VIOLATE THE FOURTEENTH AMENDMENT'S PROHIBITION AGAINST PURPOSEFUL DISCRIMINATION.

Petitioners' brief is premised on the assumption that Hazelwood's employment practices were not shown to be purposefully discriminatory (Br. 26-27). Once that assumption is made, important issues of law may arise. But, there is ample evidence in this record demonstrating that Hazelwood has engaged in purposeful discrimination against black applicants for teaching positions. Although the district court did not reach that conclusion because it evaluated the evidence of purposeful discrimination piecemeal, the court of appeals corrected that mistake. It evaluated the evidence as a whole and concluded that Hazelwood had engaged in racial discrimination (Pet. App. 3b). Furthermore, as we read its opinion, the court of appeals concluded that this discrimination was purposeful. In any event, the record compels the conclusion that Hazelwood's hiring practices were purposefully discriminatory, and thus violated the Fourteenth Amendment as well as Title VII. Accordingly, this Court should affirm the decision below without reaching the constitutional issues presented by petitioners.

A. IN CONCLUDING THAT DEFENDANTS HAD NOT ENGAGED IN PURPOSEFUL DISCRIMINATION, THE DISTRICT COURT APPLIED AN IMPROPER STANDARD.

1. District Courts Must Consider the Totality of the Evidence in Determining Whether a School District's Employment Practices Are Purposefully Discriminatory.

It is well established that where a defendant's purpose, motive or intent is an element of an alleged violation of law, the courts must look to the totality of the defendant's conduct. For example, in anti-trust cases this Court has said that it is the "established judicial rule of evidence that testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny."[3] Similarly, where an employer's "good faith" or anti-union animus is in issue under the National Labor Relations Acts, as amended, 29 U.S.C. § 151 *et seq.*, it is the established rule that "the Board must inquire into the 'totality of the employer's conduct.' "[4]

The same rule applies where the Court must determine whether racial motive or purpose taints chal-

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[3] *F.T.C.* v. *Cement Institute*, 333 U.S. 683, 705 (1948). *Accord*, *Standard Oil Co.* v. *United States*, 221 U.S. 1, 46-47, 75-77 (1911); *United States* v. *Reading Co.*, 253 U.S. 26, 43-44 (1920); *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U.S. 690, 698-99 (1962).

[4] *N.L.R.B.* v. *Cascade Employers Assn., Inc.*, 296 F.2d 42, 47 (9th Cir. 1961). *Accord*, *N.L.R.B.* v. *Reed & Prince Mfg. Co.*, 205 F.2d 131, 134, 139-40 (1st Cir. 1953); *N.L.R.B.* v. *Wonder State Mfg. Co.*, 344 F.2d 210, 216 (8th Cir. 1965); *Joy Silk Mills* v. *N.L.R.B.*, 185 F.2d 732, 741-42 (D.C. Cir. 1950); *N.L.R.B.* v. *National Seal Corp.*, 127 F.2d 776, 778 (2d Cir. 1942).

lenged practices or policies of a defendant. In *Washington* v. *Davis,* 426 U.S. 229, 242 (1976), this Court pointed out that "[n]ecessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts. . . ." And in *Keyes* v. *School District, No. 1, Denver,* 413 U.S. 189 (1973), this Court held that the trial court had failed to apply a proper legal standard when it compartmentalized the evidence relevant to the issue of segregatory intent. *Cf. Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* 45 U.S.L.W. 4073, 4077-78 (Jan. 11, 1977).

2. The District Court Erroneously Compartmentalized the Evidence of Purposeful Discrimination.

As we show below, the district court did not consider all of the relevant factors together in resolving the issue of racial purpose. Instead, the court isolated each item of proof and weighed it as if it bore no relationship to the rest of the evidence.

The district court, in its analysis of the evidence,[5] narrowly and erroneously characterized the Government's contentions concerning racial purpose. According to the court, the Government contended that two facts "standing alone demonstrate[d] the operation of a dual system in Hazelwood"—(1) that prior to *Brown* v. *Board of Education,* 347 U.S. 483 (1954), Missouri law required all school districts to operate their schools on a racially segregated basis, and (2) that immediately after *Brown I,* the Hazelwood school board estab-

[5] The district court's analysis of the evidence commences on page 17 of its opinion (Pet. App. 17a).

lished a policy that would pay tuition for any black children who might reside in the district so that these children could be educated outside the district (Pet. App. 17a).

Having too narrowly defined the Government's contentions, the court held that "[p]laintiff's evidence falls far short of establishing that a dual system ever existed in Hazelwood" because there were no black students in Hazelwood prior to *Brown* and the policy adopted immediately upon the appearance of black residents after *Brown* "was not a policy of mandatory transfer and would in any case have had a de minimus effect," given the "small number of black students who might have been involved." (*Id.*).

In so characterizing the claims of the United States, the court failed to take account of the following facts adduced by the Government:

(1) Before *Brown* the school districts in St. Louis County assigned black faculty to black schools exclusively and Hazelwood, having no black schools, employed no black faculty (Pet. App. 3b);

(2) In determining to provide tuition for black children so that they would attend schools outside of the district, the Hazelwood School Board was consciously engaging in racial discrimination against black children (*id.* at 2a, 17a);

(3) As late as 1962, the school district advertised publicly for teachers who were "whites only" (*id.* at 3b);

(4) As late as the 1962-63 school year, some of Hazelwood's application forms still provided a space for designation of race (*id.* at 3b. *See also* Pet. App. 4a);

(5) The school district recruited for teachers extensively during the '60s and to a lesser extent during the '70s, but in all that time it never recruited at a teacher training institution having a predominantly black student body,[6] although there were such institutions well within the compass of the school district's recruiting area (*id.* at 3a-4a, 4b);

(6) Until at least 1967, the school district did not hire any black person in a nonteaching capacity such as janitor or bus driver (Kirby Dep. 3, 52-53, 55);[7] and

(7) For 15 years following *Brown,* the school board did not hire a single black teacher, notwithstanding the fact that by 1970, over 15 percent of all teachers, or approximately 3,000 teachers, in St. Louis City and County were black (*id.* at 3a, 18a, 4b, 10b).[8]

(8) During the two school years immediately prior to the trial, 1972-73 and 1973-74, seven black applicants were rejected because they had not yet received their teaching certificates while white

[6] In 1963 or 1964, Hazelwood's personnel director visited Lincoln University, a predominantly black school in Missouri. He met with the placement director but did not interview teaching candidates (Pet. App. 9b n.6).

[7] Superintendent Kirby testified that he served as superintendent of the Hazelwood district between 1953 and 1967 and that it did not hire a black person during that time in any "non certified" or nonprofessional capacity (Kirby Dep. 2-3, 52-53, 55).

[8] The district court adverted to the fact that no black faculty members were hired prior to 1969, saying simply—and erroneously—that plaintiff contends that this "shows a lack of affirmative action to overcome previous discrimination" (Pet. App. 17a). Plaintiff contended that the failure to hire a single black teacher in 15 years was evidence of purposeful discrimination (U.S. Trial Brief, p. 6, and U.S. Proposed Findings of Fact, ¶ 4).

candidates who also lacked certificates were employed to fill jobs sought by these black applicants.[9] In addition, Hazelwood advised four black applicants that there were no vacancies in their teaching areas, but soon thereafter hired white candidates to fill positions in those areas.[10] Finally, two black applicants who had served as student teachers in the system were not afforded the preference customarily granted for prior service in the Hazelwood District.[11]

[9] The court of appeals found that seven black applicants—Alice Moore Roach, Delores Penton, Georgia Shaw, Alexis Smith, Geraldine Thomas, Mary Etta Wilson and Robert Wilson—were rejected by Hazelwood for lack of certification at the time of their respective applications. In the period during or subsequent to 1972-73, Hazelwood hired as teachers at least thirty-nine whites who were not certified at the time of their application. (Pet. App. 18b-23b). *See also* Plaintiff's Trial Exhibit 61 (JA. 429-31) which identifies 101 persons serving as Hazelwood teachers who were not certified at the time of application. "Fifty-three of these teachers had not yet received their certification at the time they were offered employment" (Pet. App. 5b n.2).

[10] Hazelwood informed black applicants Derek Novel and James Washington that there were no vacancies in their field, social studies. Subsequently, it hired 20 social studies teachers. (Pet. App. 17b-18b). Black applicant Samuel Downs was informed that "there would probably be no vacancies in his field," industrial arts, and "never had a formal interview. . . . Two such vacancies were filled after his application . . ." (*id.* at 18b). Cynthia Edmond, a black applicant for a social studies position, "was told no vacancies existed" and was not interviewed; yet five whites were hired thereafter as social studies teachers. She renewed her application the next year, 1973, was again not interviewed, and nine more social studies teachers were hired (*id.* at 19b).

[11] "Persons with student or substitute teaching experience at Hazelwood are given preference if their performance was satisfactory. (Huss Dep. 29)" (Pet. App. 6a). Black applicant Robert Howell "had served as a student teacher at Hazelwood Senior High, and his cooperating teacher had been impressed with his abilities. Hazelwood offered no evidence to explain why Howell was

The district court's compartmentalized approach to the evidence is manifested in its treatment of the statistical evidence (Pet. App. 18a). Treating the Government's case as if it were based solely on statistics, the court stated that it "found no authority to suggest that a school district may be guilty of violating Title VII for failing to maintain a ratio of black teachers based upon the racial makeup of all teachers in the geographic area" (*id.* at 19a).[12] Thus, the court improperly isolated the statistical evidence instead of considering that evidence together with the rest of the case to determine whether the Government had established a prima facia case.

The court's piecemeal approach is further reflected in its treatment of the evidence demonstrating that the school district utilized vague, unwritten and highly

never interviewed for any of the 10 vacancies in social studies filled by whites subsequent to his application. Only one of these whites had more experience than Howell. Neither did Hazelwood attempt to explain why, as a former student teacher at Hazelwood, Howell was not given preference over other applicants, in light of their practice of doing so." (Pet. App. 17b-18b). Black applicant Georgia Shaw also had served as a student teacher in the Hazelwood District and had received a "laudatory recommendation" from her cooperating teacher, yet Hazelwood never interviewed her. (*Id.* at 21b-22b).

[12] The district court said that "the figure of 15% black teachers, against which plaintiff seeks to compare the Hazelwood district's employment record, is distorted by the inclusion of data from the St. Louis City district" (Pet. App. 19a). We do not understand why the available pool of black teachers is "distorted" by inclusion of those black teachers who teach in a nearby school system having a substantial percentage of black students and faculty. Even assuming some "distortion" existed, this could not begin to account fully for a complement of black teachers in the Hazelwood District which the trial judge found to be "undeniably meager" (*id.*).

subjective criteria. The court noted the need for published standards in order to prevent principals from abusing their "broad discretion" (*id.* at 22a). At the same time, the court concluded that none of the criteria that the principals said they used involved explicit "racial distinctions" (*id.*). It is not enough, we submit, to conclude that vague, subjective and unwritten criteria are not explicitly racial. It was necessary to consider whether, in light of other evidence of racially discriminatory hiring, the decision to vest unbridled and unsupervised discretion in white administrators was calculated to produce, and did produce, discriminatory hiring decisions.

Finally, the district court turned to the evidence presented by the United States regarding the school district's decision not to hire 55 black applicants during 1972 and 1973 (*id.* at 23a). Again, the court erected an artificial wall between related items of proof. In concluding that the United States had failed to prove intentional racial discrimination (*id.* at 23a-25a), the court did not review these hiring decisions in light of the relevant body of evidence showing a pattern of purposeful discrimination in hiring.

B. The Court of Appeals, Applying The Proper Standard, Correctly Concluded That The United States Had Established A Prima Facie Case Of Purposeful Discrimination.

Petitioners argue that "[t]he court of appeals did not find that Hazelwood had purposefully discriminated against black applicants for teaching positions" (Br. 16). Petitioners would have this Court read the opinion below as though it rested upon the notion that the Government had established a prima facie case of racial discrimination based solely on effect (*id.* at 16,

17). If that were so, of course, then the court of appeals would have relied only on the statistical data introduced by the United States. But the court of appeals did not rest its conclusion solely on statistical data. Rather, it cautioned against placing undue reliance on statistical evidence (Pet. App. 8b n.5).

Furthermore, petitioners' interpretation of the court of appeals' opinion would read out of that opinion one of its principal criticisms of the district court's decision—namely that it failed to give sufficient weight to the evidence showing that prior to *Brown,* Hazelwood operated pursuant to a State law requiring racial segregation; that until the early '60s Hazelwood requested applicants to identify their race; that as late as 1962 Hazelwood publicly advertised for teachers, specifying "whites only"; that throughout the '60s and into the '70s Hazelwood recruited extensively—but in predominantly white schools only; and that not a single black teacher was hired prior to 1969. The court of appeals found these facts "highly relevant" (Pet. App. 9b). They are relevant, of course, because they show a purpose to discriminate on the basis of race.

Finally, while the court was persuaded that the statistical evidence, when considered in light of Hazelwood's hiring procedures involving the use of vague criteria, "*indicated*" a prima facie case, the court was convinced that the Government had "*established*" a prima facie case only after determining that this aspect of the government's proof was buttressed by "evidence of *actual* discriminatory practices in the hiring of teachers during the period prior to the effective date of Title VII and in the rejection of some 16 black applicants . . ." (Pet. App. 14b-15b; emphasis added).

The evidence in the record warranted, indeed compelled, the conclusion of the court of appeals that the Hazelwood School District has engaged in a pattern and practice of purposeful hiring discrimination. Accordingly, this Court should affirm the judgment below without reaching the broad constitutional issues tendered by petitioners.[13]

III. PETITIONERS' USE OF UNWRITTEN, VAGUE AND HIGHLY SUBJECTIVE CRITERIA FOR HIRING TEACHERS VIOLATED TITLE VII BECAUSE IT SERVED AS A BUILT-IN HEADWIND THAT WAS NEITHER JUSTIFIED BY EVIDENCE OF BUSINESS NECESSITY NOR SHOWN TO BE JOB RELATED.

In this section, we show that there is a second ground for affirming the decision of the court below—namely that defendants' employment criteria and practices violated Title VII, as interpreted and applied by this Court in *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971). In *Griggs* this Court ruled that employment criteria or procedures which operate to exclude a significantly disproportionate percentage of minority group persons are barred by Title VII unless the employer shows that the criteria and procedures are justified by business necessity (*id.* at 431-32).

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[13] If this Court should disagree with our reading of the court of appeals' opinion, the Court should, on the basis of its own review of the evidence, affirm the judgment below on the ground that the Government proved a pattern or practice of purposeful discrimination. While this Court does not often sit to review evidentiary issues, such a review would be warranted by the Court's policy of avoiding far-reaching constitutional issues where the record presents a narrower ground for disposition of the case. *Neese* v. *Southern Railway Co.,* 350 U.S. 77, 78 (1955); *District of Columbia* v. *Little,* 339 U.S. 1, 3-4 (1950). *Cf. Ashwander* v. *Tennessee Valley Authority,* 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring); *United Public Workers* v. *Mitchell,* 330 U.S. 75, 90 n.22 (1947).

This Court made clear that "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups . . ." *Griggs, supra,* 401 U.S. at 432.[14] We show below that Hazelwood's employment procedures and criteria serve as "built-in headwinds" against minority employment opportunity.

Long before *Griggs,* this Court recognized that seemingly neutral standards which vest broad discretion in white administrators may serve as barriers to minority participation in public activities. In *Smith* v. *Texas,* 311 U.S. 128 (1940), this Court noted that "the Texas statutory scheme [for selecting grand jurors] is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But, by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable" (*id.* at 130-31). In *Louisiana* v. *United States,* 380 U.S. 145 (1965), the Court said that "[t]he applicant facing a [voting] registrar in Louisiana . . . has been compelled to leave his voting fate to that official's uncontrolled power to determine whether the applicant's understanding of the Federal or State Constitution is satisfactory. As the evidence showed, colored people,

[14] While petitioners place great weight on *Washington* v. *Davis,* 426 U.S. 229 (1976), nothing in *Davis* alters *Griggs'* ruling on intent. The Court in *Davis* stated that "Under Title VII, Congress provided that when hiring and promotion practices disqualifying substantially disproportionate numbers of blacks are challenged, discriminatory purpose need not be proved, and that it is an insufficient response to demonstrate some rational basis for the challenged practices" (*id.* at 246-47).

even some with the most advanced education and scholarship, were declared by voting registrars with less education to have an unsatisfactory understanding of the Constitution of Louisiana or of the United States," (*Id.* at 152-53).

Griggs and its progeny serve to prevent similar abuses by public and private employers. Where employers utilize unwritten, extremely vague and highly subjective standards that effectively confer unfettered discretion on hiring officials and that process disproportionately impedes the employment opportunities for minority groups, lower federal courts have held that the employer's hiring criteria and procedures violate Title VII unless they are shown to be justified by business necessity. *Muller* v. *United States Steel Corp.,* 509 F.2d 923, 928 (10th Cir.), *cert. denied,* 423 U.S. 825 (1975); *Rowe* v. *General Motors Corp.,* 457 F.2d 348 (5th Cir. 1972); *Cf. EEOC* v. *Detroit Edison Co.,* 515 F.2d 301, 313 (6th Cir. 1975).

Hazelwood's vague and subjective criteria serve as built-in headwinds against minority groups. The court of appeals pointed out that in Hazelwood "each principal is vested with almost total discretion in hiring teachers for his school" (Pet. App. 12b). The only written instruction to these principals is to hire the "most competent." There is "no evidence . . . which would indicate that any two principals apply the same criteria—objective or subjective." Principals "are free to give whatever weight they desire to subjective factors . . . ." The interview process, at least in the minds of some principals, becomes so much a matter of personal taste or whimsy as to be " 'like dating a girl,

some of them impress you, some of them don't.' " [15] (*Id.*).

The potential for racial abuse inherent in Hazelwood's vague and highly subjective criteria is substantially enhanced by the fact that Hazelwood has hired white administrators exclusively (Plaintiff's Trial Exhibit 55, HEW 101 and 102 forms from School Year 1967-68 to 1972-73 and EEOC Form EEO5 for 1973-74). As a result, the intensely personal and subjective values that are factored into hiring decisions are loaded in favor of white candidates.[16] The administrators who approach the interviewing process for black and white candidates as though they were " 'dating a girl' " are white administrators only (Pet. App. 12b).

The record demonstrates that the potential for racial abuse has been realized. For fifteen years after *Brown,* the Hazelwood district did not hire a single black teacher. In recent years, black applicants have been barred on grounds not applied to white applicants,

[15] Even the district court observed that school officials in Hazelwood "should be encouraged to develop and publish standard guidelines for employment of teachers in order to minimize the possibility that an individual interviewer might abuse the broad discretion which he currently possesses" (Pet. App. 22a).

[16] In *Rowe* v. *General Motors Corp.*, 457 F.2d 348, 359 (5th Cir. 1972), the Fifth Circuit noted that subjective evaluations, unstructured by written instructions "are a ready mechanism for discrimination against Blacks much of which can be covertly concealed and, for that matter, not really known to management. We and others have expressed a skepticism that Black persons dependent directly on decisive recommendations from Whites can expect nondiscriminatory action. See, *Hawkins* v. *North Carolina Dental Society,* 4 Cir., 1966, 355 F.2d 718, 723-24; *Cypress* v. *Newport News General and Nonsectarian Hosp. Assn.*, 4 Cir., 1967, 375 F.2d 648, 655; *Meredith* v. *Fair,* 5 Cir., 1962, 298 F.2d 696, 702, *cert. denied,* 1962, 371 U.S. 828, 83 S.Ct. 49, 9 L.Ed. 2nd 66."

vacancies have been found for white applicants though they purportedly did not exist for black applicants, and the customary preference for student teaching experience has not been afforded to at least two black candidates. (*See,* pp. 10-11, *supra*). Petitioners argue (Br. 46-49) that applicant flow data in the record show that black candidates in more recent years have been hired at a rate as high as or higher than the hiring rate for white candidates. Petitioners' argument rests on a factually unsupported premise. While one may be able to determine how many black teachers are in fact hired each year by Hazelwood, one cannot reliably determine how many of the persons applying to Hazelwood for employment are black because, as the district court found, Hazelwood has not required applicants to submit photographs or to otherwise identify their race since 1962-63 (Pet.App. 4a, 3b). Whatever the gross statistics may be, they cannot refute or explain the fact that individual black applicants have been treated differently from similarly situated white applicants.

The defendants have offered no evidence that the built-in headwinds created by their hiring procedures and criteria are justified by business necessity. Indeed, they have offered no evidence that these procedures and criteria are job-related. In view of the Government's evidence, it is clear why they did not attempt to offer such proof. Here, as in *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 433 (1975), "[t]here is no way of knowing precisely what criteria of job performance the supervisors were considering, whether each of the supervisors was considering the same criteria—or whether, indeed, any of the supervisors actually applied a focused and stable body of criteria of any kind. There is, in short, simply no way to determine whether the cri-

teria *actually* considered were sufficiently related to the ... [employer's] legitimate interest in job-specific ability to justify a ... system with a racially discriminatory impact." Accordingly, petitioners' hiring criteria and procedures are repugnant to Title VII.

IV. EXTENSION OF TITLE VII COVERAGE TO PUBLIC EMPLOYERS IS A VALID EXERCISE OF CONGRESSIONAL POWER UNDER BOTH THE COMMERCE CLAUSE AND SECTION 5 OF THE FOURTEENTH AMENDMENT.

In the Equal Employment Opportunity Act of 1972, Congress extended Title VII to agencies of state government, relying upon the authority granted to it by the Commerce Clause, Article I, § 8, cl. 3, and Section 5 of the Fourteenth Amendment. See H.R. Report No. 92-238, 92d Congress, 1st Session 19 (1971); S. Rep. No. 92-415, 92d Congress, 1st Session 11 (1971), 118 Cong. Rec. 1816, 1839-40 (1972) (remarks of Senators Williams and Javits). Petitioners contend that in light of this Court's decision in *National League of Cities* v. *Usery,* 426 U.S. 833 (1976), and *Washington* v. *Davis, supra,* neither source of legislative authority can sustain Title VII of the Civil Rights Act of 1964 insofar as that law bars state and local public agencies from engaging in employment practices which, while adversely affecting minority groups and females, are not shown to be purposefully discriminatory (Br. 18-19). We show below that petitioners have overdrawn the scope of *National League of Cities* and the impact of *Washington* v. *Davis.* Both the Commerce Clause and the Fourteenth Amendment support Title VII as amended in 1972.

A. The Commerce Clause Authorizes Application Of Title VII To Agencies Of State Government.

1. In *National League of Cities,* this Court held that the minimum wage and maximum hour provisions of the Fair Labor Standards Act could not constitutionally be applied to employees of state and local governments who were engaged in traditional government functions. The teaching of *National League of Cities* is that even though an activity directly affects interstate commerce, pertinent legislation based on the Commerce Clause *may* nonetheless be invalid if it offends state sovereignty principles inherent in the federal constitution and embodied in the Tenth Amendment (*id.* at 840-41; see also Brennan, J., dissenting at 858). The holding of that case is that these principles constitute an affirmative limitation on Congressional exercise of the commerce power when that power is exercised in a fashion that unnecessarily intrudes upon governmental " 'functions essential to [the] separate and independent existence' " of the state (*id.* at 845, quoting from *Coyle* v. *Oklahoma,* 221 U.S. 559, 580 (1911)).

National League of Cities does not indiscriminately bar all federal legislation enacted pursuant to the Commerce Clause that would regulate state agencies in their role as employers. The Court specifically declined to overrule *Fry* v. *United States,* 421 U.S. 542 (1975) (sustaining congressional power to apply a wage freeze to employees of state government); *Parden* v. *Terminal Railway Co.,* 377 U.S. 184 (1964) (sustaining congressional power to apply the Federal Employers Liability Act to state-owned railroads); *California* v. *Taylor,* 353 U.S. 553 (1957) (sustaining congressional power to apply the Railway Labor Act

to state-owned railroads); or *United States* v. *California,* 297 U.S. 175 (1936) (sustaining congressional power to apply the Safety Appliance Act to state-owned railroads). Rather, *National League of Cities,* as we read it, sets forth a three-fold test for determining whether federal regulation of state affairs under the Commerce Clause violates Tenth Amendment proscriptions. First, the legislation must affect "areas of traditional governmental functions" of the states and not merely proprietary functions (426 U.S. at 852). Second, the legislation affecting such traditional governmental functions must impair an attribute of state sovereignty which is "essential" to the states' "separate and independent existence" in the federal system; *e.g.,* the right to determine the wages of state employees (*id.* at 845). Third, the federal interest in the legislation must not outweigh the impact of the legislation on the states (*id.* at 851-52).

That this Court applied a balancing test in *National League of Cities* seems clear from the rationale which the Court used in reconciling its holding with that in *Fry* v. *United States,* 421 U.S. 542 (1975) (*id.* at 852-53). The opinion of the Court acknowledged that the legislation sanctioned in *Fry* intruded upon the states' sovereign authority. Nonetheless, the Court concluded that *Fry* and *National League of Cities* were reconcilable since the federal interest in imposing narrowly drawn, "emergency" legislation exceeded the degree of intrusion resulting from temporary inhibitions upon state and local prerogatives.[17] As we show below,

[17] See Mr. Justice Blackmun's concurring opinion, 426 U.S. at 856 ("I may misinterpret the Court's opinion but it seems to me that it adopts a balancing approach . . ."). *See also* Mr. Justice Brennan's dissenting opinion (*id.*). Lower courts have concluded that *National League of Cities* requires a balancing test. *E.g., Christensen* v. *State of Iowa,* 417 F.Supp. 423 (N.D. Iowa 1976); *Usery* v. *Univ. of Texas at El Paso,* 12 EPD ¶ 11,254 (W.D. Tex. 1976); *Usery* v. *Kenosha Unified School Dist. Number One,* 13 EPD ¶ 11,240 (E.D. Wis. 1976). *See also Usery* v. *Fort Madison Community School District,* 79 LC ¶ 33,419 (S.D. Iowa, 1976); *Usery* v *.Bettendorf Community School District,* 423 F.Supp. 637 (S.D. Iowa 1976); *Usery* v. *Dallas Independent School District,* 421 F.Supp. 111, 114-16 (N.D. Tex., 1976); *Usery* v. *Kermit C. Morrissey,* 79 LC ¶ 33,455 (D. Mass. 1976).

the balance struck in *National League of Cities* does not dictate the same result here.

2. Petitioners have not demonstrated that Title VII intrudes upon an attribute of state sovereignty which is essential to the state's independent existence, nor that the federal interest is outweighed by Title VII's impact on state sovereignty. As petitioners acknowledge, Title VII does not directly impose costs upon covered state or local agencies (Br. 21). The point is an important one, for the direct imposition of substantial costs upon state and local agencies appears to have been the principal, if not determinative, factor that led this Court in *National League of Cities* to invalidate in part the Fair Labor Standards Act (426 U.S. at 845-47).

In arguing that Title VII infringes upon state sovereignty, petitioners have erroneously stated the burdens that Title VII imposes. Petitioners claim to be burdened by the record-keeping and reporting requirements decreed by the court of appeals and by its directive that petitioners afford the right of first refusal to 16 black applicants determined by that court to have been denied their Title VII rights (Br. 21). These requirements, however, were imposed only be-

cause petitioners had violated Title VII. That law does not lay these "burdens" upon employers who comply with its provisions.

Petitioners further argue that as a practical matter school districts may satisfy the requirements of Title VII only if they engage in racially, religiously or sex-oriented hiring practices designed to bring their average workforce statistics up to the defined area standard, without regard for qualifications (Br. 22). This is so, petitioners assert, because "[i]n view of the inherently subjective nature of the process of hiring teachers," a prima facie case of statistical discrimination "cannot be rebutted" (*id.*).

Petitioners' argument assumes that under Title VII a prima facie statistical case of discrimination in the hiring of teachers can only be rebutted by a showing that the employer utilized objective criteria. But Title VII was not so applied by the court below. That court did not conclude that Title VII required petitioners to utilize objective criteria. On the contrary, it ordered petitioners to formulate a written "description of the proper *subjective* factors to be considered" during interviews (Pet. App. 26; emphasis added). Thus, this case does not present the questions whether a prima facie statistical case of discrimination in the hiring of teachers can be rebutted under Title VII only by a showing that the employer used objective criteria, and, if so, whether Title VII, as so construed, is constitutional.

Petitioners also stress language from *Milliken* v. *Bradley,* 418 U.S. 717, 741-42 (1974), regarding the tradition of "local control" that has prevailed in public education. Relying on prior cases, the Court in *Milliken* pointed out that such "local control . . . affords citizens an opportunity to participate in decisionmaking, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence' " (*id.*). We fail to see how these values are undermined by the application of Title VII to Hazelwood. In our view, local citizens would have a more adequate "opportunity to participate in decisionmaking" and the structuring of programs concerning teacher hiring if the school system maintained a written body of hiring criteria rather than a conglomeration of procedures so unstructured as to afford no focus for citizen comment or criticism (*see* pp. 17-18, *supra*).

3. The alleged burdens complained of by Hazelwood which are attributable to Title VII are, in our view, clearly outweighed by the federal interests involved. The legislative history of the Civil Rights Act of 1964 shows that in adopting Title VII, Congress recognized that this nation needed to draw extensively upon the talents and energies of minority group persons and females. *E.g.,* H.R. Report No. 1370, 87th Cong., 2d Sess. 3 (1962), *reprinted in* EEOC, Legislative History of Titles VII and XI of the Civil Rights Act of 1964, at 2157. The 1972 Amendments to Title VII not only substantially helped to meet this need, but also implemented the Constitution's commitment to the protection of the civil rights of all persons. As we discuss later in greater detail, the 1972 Amendments to Title VII serve this commitment by barring state and local government employment practices that unnecessarily freeze in the effects of prior discrimination and by furthering elimination of discrimination in public

services. See *infra,* pp. 30-35. These federal interests, we submit, outweigh any legitimate interest that state and local governments may have in being free to utilize unnecessary hiring criteria and procedures which seriously disadvantage minority groups.

In a related context, lower federal courts which have reached the question subsequent to *National League of Cities* have concluded that the Equal Pay Act, as applied to state and local government employees, is within the power of Congress under the Commerce Clause. These courts have determined that the federal interest served in preventing employers, whether or not motivated by a discriminatory purpose, from engaging in pay practices which treat similarly situated men and women differently outweighs any state interest in preserving the power to indulge such disparate treatment.[18] In like fashion, this Court should hold that the federal interests in promoting equal opportunity in public employment outweigh the purported sovereign right of state and local agencies to exclude protected minorities on the basis of criteria and procedures that are not shown to be justified by business needs.

B. SECTION 5 OF THE FOURTEENTH AMENDMENT AUTHORIZES APPLICATION OF TITLE VII TO STATE AND LOCAL PUBLIC EMPLOYERS.

1. Principles of State Sovereignty Do Not Restrict the Scope of Legislation Enacted Pursuant to § 5 of the Fourteenth Amendment.

While the grant of legislative authority in the Commerce Clause must accommodate state sovereignty

[18] See cases cited at note 17, *supra.*

principles preserved by the Tenth Amendment, those principles do not have a similar restrictive effect on legislation enacted pursuant to Section 5 of the Fourteenth Amendment. In *Ex Parte Virginia,* 100 U.S. 339 (1879), this Court observed that the Civil Rights Amendments "were intended to be, what they really are, limitations of the power of the States and enlargements of the power of Congress," 100 U.S. at 345. The Court concluded that Congress' authority to enact appropriate legislation is plenary:

> "[T]he Constitution now expressly gives authority for congressional interference and compulsion in the cases embraced within the Fourteenth Amendment. It is but a limited authority, true, extending only to a single class of cases; but within its limits it is complete." 100 U.S. at 347-48.

Last term in *Fitzpatrick* v. *Bitzer,* 427 U.S. 445, 456 (1976), the Court noted that Section 5 of the Fourteenth Amendment was designed specifically to permit legislation that would inhibit a state's sovereign power.

> ". . . [W]e think that the Eleventh Amendment, and the principle of state sovereignty which it embodies, [citations omitted] are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment. In that section Congress is expressly granted authority to enforce 'by appropriate legislation' the substantive provisions of the Fourteenth Amendment, which themselves embody significant limitations on state authority. When Congress acts pursuant to § 5, not only is it exercising legislative authority that is plenary within the terms of the constitutional grant, it is exercising that authority under one section of a constitutional Amendment whose other sections

by their own terms embody limitations on state authority."

See also South Carolina v. *Katzenbach,* 383 U.S. 301, 324 (1966) ("As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting").

In sum, legislation enacted pursuant to Section 5 of the Fourteenth Amendment is not limited by the precepts of the Tenth or Eleventh Amendments. Therefore, if Title VII is "appropriate" legislation within the meaning of Section 5—an issue to which we now turn—then it must stand.

2. Section 5 of the Fourteenth Amendment Empowers Congress to Prohibit Conduct That May Lie Outside the Direct Prohibitions of the Equal Protection Clause If the Legislation Is in Aid of the Equal Protection Clause.

Petitioners urge that legislation cannot be "appropriate" within the meaning of Section 5 if it prohibits state conduct "in the absence of proof of purposeful discrimination" (Br. 31). Petitioners' argument, however, collides with this Court's ruling in *Katzenbach* v. *Morgan,* 384 U.S. 641 (1966).

In *Morgan,* the Court upheld Section 4(e) of the Voting Rights Act of 1965, which prohibited states from denying voting privileges to non-English speaking citizens who were educated in "American flag" schools. The defendants in *Morgan* urged that because the Court had previously determined that literacy requirements do not *per se* violate the Fourteenth Amendment, Congress could not enact Section 4(e).

See Lassiter v. *Northampton County Board of Education,* 360 U.S. 45 (1959). This Court, however, rejected this argument. It ruled that Section 5 permits Congress to exceed the Fourteenth Amendment's substantive standards where Congress believes that the prohibition of otherwise permissible practices will aid in the elimination of Fourteenth Amendment violations. As the Court stated in *Morgan,* "[c]orrectly viewed, § 5 [of the Fourteenth Amendment] is a *positive grant* of legislative power authorizing Congress to exercise *its discretion* in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment" (*id.* at 651; emphasis added).

In applying this standard, the *Morgan* Court noted that Congress might well have concluded that elimination of English literacy tests would enhance Puerto Rican political power and thereby prevent governmental discrimination against the entire Puerto Rican community in matters relating to the provision of public services. 384 U.S. at 652-53. Since the Court could "perceive a basis" upon which Congress could find a rational relationship between the prohibited practice and a recognized Fourteenth Amendment violation, it upheld the legislation as an appropriate exercise of Congress' enforcement clause authority. See also *Ex Parte Virginia,* 100 U.S. 339, 345-46 (1879): "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought

within the domain of congressional power." See also *South Carolina* v. *Katzenbach,* 383 U.S. 301 (1966) (expressing in the same broad terms the scope of Section 2 of the Fifteenth Amendment); *Jones* v. *Alfred H. Mayer Co.,* 392 U.S. 409 (1968) (same as to Section 2 of the Thirteenth Amendment); *Everard's Breweries* v. *Day,* 265 U.S. 545, 558-559 (1924) (same as to Section 2 of the Eighteenth Amendment).[19]

Thus, the decisions of this Court are inconsistent with petitioners' argument that legislation cannot be appropriate within the meaning of Section 5 if it prohibits state conduct "in the absence of proof of purposeful discrimination" (Br. 31).[20]

3. Extension of Title VII to State and Local Public Employers Is Within the Authority of Congress Under Section 5 of the Fourteenth Amendment.

(a) The legislative history of the 1972 Amendments to Title VII demonstrates that Congress sought not only to eliminate the isolated discriminatory acts of

[19] And *see United States* v. *Guest,* 383 U.S. 745 (1966), where six justices in concurring opinions declared that Section 5 authorizes Congress to punish private conspiracies that impede Fourteenth Amendment rights.

[20] Petitioners seek comfort from *Oregon* v. *Mitchell,* 400 U.S. 112 (1970), but their reliance is misplaced. In that case, this Court, by a 5-4 vote, concluded that Congress lacked authority under Section 5 of the Fourteenth Amendment to require states to permit 18 year olds to vote in state elections. A majority of this Court was assembled in support of this position only because three justices, in an opinion authored by Mr. Justice Stewart, could not conceive of any constitutional infirmity that the statute might possibly have been designed to address. Because they could find no possible constitutional violation that would be remedied by legislation, these three justices did not decide what remedial legislation is appropriate once it is established that the objective of Congress is to remedy acknowledged Fourteenth Amendment violations.

public officials but also to remove unnecessary barriers to minority group employment—barriers which had the effect of perpetuating the past purposeful discrimination that had occurred throughout American society and was especially pervasive in state and local governments. The preceding seven years of litigation under Title VII, culminating in this Court's decision in *Griggs,* had demonstrated that unnecessary job requirements, though facially neutral, served to freeze in the effects of past racial discrimination against minority groups. The Senate Committee Report summarized the lessons of those seven years as follows:

> "In 1964, employment discrimination tended to be viewed as a series of isolated and distinguishable events, for the most part due to ill-will on the part of some identifiable individual or organization. It was thought that a scheme that stressed conciliation rather than compulsory processes would be most appropriate for the resolution of this essentially 'human' problem, and that litigation would be necessary only on an occasional basis. Experience has shown this view to be false.
>
> "Employment discrimination as viewed today is a far more complex and pervasive phenomenon. Experts familiar with the subject now generally describe the problem in terms of 'systems' and 'effects' rather than simply intentional wrongs, and the literature on the subject is replete with discussions of, for example, the mechanics of seniority and lines of progression, *perpetuation of the present effect of pre-act discriminatory practices through various institutional devices,* and testing and validation requirements." (S. Rep. No. 92-415, 92d Cong., 1st Sess., 5, 10 (1971); emphasis added)

The Senate Committee Report also states that findings of the U.S. Commission on Civil Rights

> "indicate that the existence of discrimination is perpetuated by both institutional and overt discriminatory practices, and that past discriminatory practices are maintained through *de facto* segregated job ladders, invalid selection techniques, and stereotypical misconceptions by supervisors regarding minority group capabilities. The study also indicates that employment discrimination in State and local governments is more pervasive than in the private sector." (*Id.*)

Congress, aware of the pervasive and massive purposeful discrimination which had occurred in the past —including the maintenance of dual school systems in many states such as Missouri—wanted to insure that the effects of such discrimination were not perpetuated by needless barriers which continued the exclusions and disadvantages suffered by minorities as a result of past intentional discrimination.[21] The Equal Protection Clause, by its own force, bars a state from perpetuating the effects of its own prior discrimination. *See Louisiana* v. *United States,* 380 U.S. 145, 154-55 (1965); *Gaston County* v. *United States,* 395 U.S. 285, 296-97 (1969). But in seeking to remove the effects of prior purposeful discrimination by public agencies, Congress may prevent one agency from perpetuating the effects of discrimination wrought by another agency, and Congress need not limit the protection of its statute to those members of the victimized class who

[21] The countless references to *Griggs* in the testimony, reports and debates preceding the adoption of the 1972 amendments leave no doubt that Congress was aware of and intended to curtail the use of procedures by state and local public employers that needlessly freeze in the effects of past discrimination.

are able to disentangle the effects of private and official discrimination and to trace their plight to the latter. Pursuant to the "positive grant" of authority in Section 5 of the Fourteenth Amendment, Congress may in its "discretion" determine that such past intentional discrimination has been sufficiently pervasive to warrant a blanket prohibition against unnecessary procedures and criteria which would have the effect of perpetuating prior discriminatory practices. It could conclude that case-by-case litigation in which individual minority group members had the burden of establishing that they were individually victimized by such prior discrimination would be unduly burdensome and ineffective in removing the barriers which Congress wished to dismantle.

Congress, on the basis of the facts and testimony before it, had a rational basis for finding that its chosen regulatory scheme was necessary to remove the evil it was addressing. Its action was within the scope of its power under Section 5, which confers upon Congress "the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18." *Katzenbach* v. *Morgan,* 384 U.S. 641, 650 (1965). For Congress is empowered, in pursuit of a "legitimate end" which is "within the scope of the Constitution," to adopt "all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution . . . ." *Id.* at 650, 651. See *McCulloch* v. *Maryland,* 4 Wheat. 316, 421 (1819); *South Carolina* v. *Katzenbach,* 383 U.S. 301, 327-328 (1966). *Katzenbach* v. *McClung,* 379 U.S. 294, 303-304 (1964); *United States* v. *Darby,* 312 U.S. 100, 120-121 (1941); *Everard's Breweries* v. *Day,* 265 U.S. 533, 560-561 (1924).

(b) There is an additional basis supporting Congress' reliance upon the authority granted in Section 5 of the Fourteenth Amendment. The legislative history shows that Congress, in extending Title VII to state and local public agencies, intended to further the elimination of purposeful discrimination in the provision of public services. In 1972, when Congress amended Title VII to cover state and local public employers, discrimination in public services, like discrimination in public employment, was still pervasive. Congress was concerned with insuring that minority group persons were employed in the various levels of state and local government because that would impede discrimination in the provision of public services. Senator Williams, the floor manager for the 1972 Amendments, urged in debate that:

> "this failure of state and local governmental agencies to accord equal employment opportunities is particularly distressing in light of the importance that these agencies play in the daily lives of the average citizen. From local law enforcement to social services, each citizen in a community is in constant contact with many local agencies. The importance of equal opportunity in these agencies is, therefore, self-evident." 118 Cong. Rec. 784-823 (daily ed. Jan. 31, 1972) (remarks of Sen. Williams), *reprinted in* Senate Subcommittee on Labor, 92d Cong., 2d Sess., *Legislative History of the Equal Employment Opportunity Act of 1972,* at 1114 (1972).

In the same speech, Senator Williams stated that ". . . employment discrimination at the state and local government level reflects very unfavorably upon the ability of those governmental units to deal equitably in their contracts [*sic*] with those groups against whom

they discriminate in employment" (*id.* at 1116). Senator Williams based his view, at least in part, upon a report of the United States Commission on Civil Rights that was incorporated into the legislative record. That report reflected that in Albuquerque, New Mexico, where no Mexican-American law enforcement officer held a high-ranking position, the Spanish-speaking community continuously complained of police misconduct. In contrast, the report noted that in another large city in New Mexico where the Spanish-speaking community was represented at all levels within the police department, police-community relations were excellent because the Spanish-speaking community was confident that it would receive fair treatment from the police. "Mexican Americans and the Administration of Justice in the Southwest: A Report of the United States Commission on Civil Rights," reprinted in Legislative History of the Equal Opportunity Act of 1972, *supra* at 1130 (1972).

As petitioners point out, this Court sustained the statute at bar in *Morgan* because the Court perceived that Congress "could have concluded" that literacy tests should be banned "in order to remedy discrimination against Puerto Ricans in the provision of public services" (Br. 34). As the foregoing legislative history reveals, a similar rationale was actually considered by Congress when it determined to bring state and local officials within the coverage of Title VII.

Thus, in the 1972 Amendments, Congress sought to prevent official perpetuation of the effects of prior racial discrimination, as well as to encourage the provision of public services to all persons without discrimination on the basis of race, sex or national origin.

Designed as they are to secure the guarantees of the Fourteenth Amendment, the 1972 Amendments to Title VII are authorized by Section 5 of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons the judgment below should be affirmed.

Respectfully submitted,

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April 2, 1977

Supreme Court, U. S.
FILED
APR 2 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. [redacted] 76-255

HAZELWOOD SCHOOL DISTRICT. et al.,

Petitioners,

v.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF *AMICUS CURIAE* FOR THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-225

HAZELWOOD SCHOOL DISTRICT. et al.,

Petitioners,

v.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF *AMICUS CURIAE* FOR THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Interest of *Amicus*

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation established under the laws of the State of New York. It was formed to assist Negroes to secure their constitutional rights by the prosecution of lawsuits. Its charter declares that its purposes include rendering legal services gratuitously to Negroes suffering injustice by reason of racial discrimination. For many years attorneys of the Legal Defense Fund have repre-

sented parties in employment discrimination litigation before this Court and the lower courts. The Legal Defense Fund believes that its experience in employment discrimination litigation may be of assistance to the Court.[1]

I.

Introduction

This action presents a classic case in which *de jure* segregation of public school faculties has been perpetuated in operation by purposeful discrimination in hiring. Prior to 1954 the Missouri Constitution required that separate schools be maintained for black and white children. Mo. Constn. Art. IX, § 1(a). In Missouri, as elsewhere, this requirement meant both that black students could only attend schools with other black students, and that black teachers and other faculty could only teach at all black schools.

St. Louis County, with a population of about 1.5 million, and covering an area approximately the size of Montgomery County, Maryland, is divided into 25 school districts.[2] Prior to this Court's decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), only two of the school districts operated black schools—St. Louis City and Kinloch. Black children in other districts were obligated to travel to one of these districts if they wished to attend school.[3] Under the state constitution black teachers, no matter how qualified, could only teach in these 2 districts. For a black teacher seeking employment in St. Louis County the Missouri constitution operated as a state mandated faculty assignment rule.

Although *Brown* was decided in 1954, the provision of the Missouri Constitution prohibiting the hiring of black faculty at white schools, and thus at 23 of the 25 districts in St. Louis County, was not repealed until 1976. Mo. Constn. Art. IX, § 1 (Cumulative Pocket Part, 1977). As late as 1968-69 10 of these 23 districts, with a combined faculty of over 4,000, still employed no black teachers.[4] As of 1972-73 there were still 5 districts with no black teachers, another 6 districts with less than 1% black teachers, and another 4 with under 2% blacks. Outside of St. Louis City about half of all black teachers were concentrated in 3 districts with only 5% of the total county teachers, Kinloch, Wellston and University City, with a combined faculty 45.3% black, while the remaining districts were 3.0% black. If St. Louis City is included the disparity is even greater.

The proportion of blacks on the faculty of each school district corresponded with the district's black student enrollment with almost mathematical precision.

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[1] Letters of consent to the filing of this brief have been filed with the Clerk.

[2] The exact number of districts has varied over the last 20 years as districts have merged or divided.

[3] See *United States* v. *State of Missouri,* 363 F.Supp. 739, 743 (E.D. Mo. 1973), aff'd 515 F.2d 1365 (8th Cir. 1975).

[4] The districts were Afton, Bayless, Brentwood, Hazelwood, Hancock, Jennings, LaDue, Mehville, Parkway and Riverview Gardens. See p. 4-5 infra. The total faculty of each district is set out in Plaintiff's Exhibit No. 54.

Students and Faculty; St. Louis County
1972-73[5]

District	*Percent of Faculty Non-White*	*Percent of Students Non-White*
Kinloch	88.2%	100.0%
Wellston[6]	79.8%	96.8%
St. Louis City	54.4%	68.8%
University City[6]	26.6%	54.9%
Normandy[6]	13.3%	45.9%
Webster	11.7%	16.0%
Maplewood[6]	10.4%	16.9%
Berkeley	8.0%	25.7%
Special School District of St. Louis County	7.7%	18.9%
Kickwood	7.2%	12.4%
Ritenour	5.6%	6.9%
Valley Park	1.6%	1.7%
Ferguson	1.4%	2.2%
Brentwood[7]	1.1%	10.1%
Hazelwood[8]	1.0%	2.3%
Jennings[6,7]	0.6%	3.6%
Parkway[7]	0.09%	0.2%
LaDue[7]	0.05%	1.3%
Pattonville	0.05%	0.9%
Lindbergh	0.04%	0.3%
Rockwood	0.02%	1.0%
Riverview Gardens[6]	0	1.6%

[5] Plaintiff's Exhibit 54; Department of Health, Education and Welfare, Directory of Public Elementary and Secondary Schools in Selected Districts, Fall 1972, pp. 746-785 (1972).

[6] These districts are contiguous with St. Louis City.

[7] These districts had no black faculty in the fall of 1970. Department of Health, Education and Welfare, Directory of Public Elementary and Secondary Schools in Selected Districts, Fall 1970, pp. 779-818 (1970).

District	*Percent of Faculty Non-White*	*Percent of Students Non-White*
Hancock[6]	0	0.1%
Afton[6]	0	0
Bayless[6]	0	0
Melville	0	0

The racially identifiable school faculties established by law prior to 1954 have thus continued, although now in a more elaborate version indicating not only the presence of black students but also their proportion of the school population. In addition to the two districts with black schools and teachers prior to *Brown*, blacks have been hired in districts to which substantial numbers of blacks moved since 1954, but only in those districts and only in proportion to the number of black students. The notion that black teachers should only be hired to the extent that there are black students seems such an accepted local practice that the District Judge in this case explained away the "undeniably meager" number of black teachers in Hazelwood by noting that "it has kept pace with the small but steadily increasing black enrollment in the district." *United States* v. *Hazelwood School District*, 392 F.Supp. 1276, 1787-8 (E.D. Mo. 1975).[8]

It should be noted that the distribution of black faculty is not a result of distance from the heavily black city of St. Louis. Four of the five districts with no black faculty in 1972 are adjacent to St. Louis; in 1969, of the 9 adjacent districts, 6 had no black teachers at all.[9] Similarly, 4

[8] Another judge in the same district took the same erroneous position in *United States* v. *School District of City of Jennings*, 399 F.Supp. 322, 328 (E.D. Mo. 1975), rev'd 539 F.2d 655 (8th Cir. 1976).

[9] Hazelwood, Jennings, Riverview Gardens, Hancock, Afton, Bayless, and Mehville.

districts[10] with faculties from 0.09% to 8.0% black adjoin 88.2% black Kinloch. None of the districts, with the exception of St. Louis, appear to hire a substantial portion of their teachers from among their own residents.[11]

Hazelwood is the second largest school district in St. Louis County, after St. Louis City. Between the formation of the district in 1950 and the 1968-69 school year the Hazelwood faculty rose from 27 teachers to over 900 teachers; every one of the teachers hired in these years was white. In 1972 Hazelwood had only 12 black teachers out of a faculty of 1,230, or less than 1%.[12] Hazelwood has a common boundary with St. Louis City, and the bulk of the district is adjacent to the St. Louis municipal airport, Lambert Field. The northern area of St. Louis which is closest to Hazelwood is the portion of the city with the greatest concentration of blacks. The Hazelwood School District includes the city of Black Jack, which was held to have deliberately engaged in practices to prevent blacks from moving into the area in *United States* v. *City of Black Jack,* 508 F.2d 1179 (8th Cir. 1974) *cert. denied,* 422 U.S. 1042 (1975).

The government commenced this action on August 10, 1973, alleging purposeful racial discrimination in the hiring of teachers, including application of different standards to black and white applicants.[13] The action was tried as a case of alleged deliberate discrimination. Counsel for the

[10] Patonville, Ritenour, Ferguson, Berkeley.

[11] Hazelwood, the largest of the districts outside of St. Louis City, hires about 7% of its faculty from among applicants residing in the district. *United States* v. *Hazelwood School District,* 534 F.2d 805, 811-12, n.7 (8th Cir. 1976).

[12] Plaintiff's Exhibit 54; 534 F.2d 805, 809.

[13] App. 4.

United States, in his opening statement, detailed the claim which the plaintiffs would seek to prove.

> The defendants' present racially discriminatory policy have their origin in Hazelwood's deliberate refusal to hire qualified blacks from the district's inception in 1951. . . . We will present testimony, largely by depositions, and answers to interrogatories which will show that the absence of black professional employees does not result from chance but is the result of purpose. Further, we will show that the Hazelwood District has deliberately continued employment practices which limit the number of black applicants.[14]

In its post-trial memorandum the government also urged that Hazelwood had deliberately discriminated against blacks.[15]

The district court rejected the government's contention that Hazelwood had engaged in racial discrimination, *United States* v. *Hazelwood School District,* 392 F.Supp. 1276, 1286-89 (E.D. Mo. 1975); the court of appeals reversed. 534 F.2d 805 (8th Cir. 1976). The Eighth Circuit concluded that the United States had established that Hazelwood engaged in deliberate discrimination, and rested its conclusion, *inter alia,* on evidence indicating that the white principals and supervisors, permitted to choose among applicants with a standardless discretion, had intentionally rejected blacks because of their race, 534 F.2d at 813, and that at least 16 fully qualified black applicants had been rejected in favor of less or no better qualified whites. 534 F.2d at 814-819. The court of appeals' opinion

[14] Transcript of March 25, 1974, pp. 7-8.

[15] Memorandum In Support of Plaintiff's Proposed Findings of Fact and Conclusions of Law and Proposed Order, pp. 2-5; Plaintiff's Proposed Findings of Fact and Conclusions of Law, pp. 100-101, 114, 118.

leaves no serious doubt that its finding was one of purposeful discrimination. With regard to the practice of according interviewers standardless discretion, the court stressed "[i]n our view, it is more than mere coincidence that the use of such procedures produced only a few black teachers," 534 F.2d at 812, and that these practices were "susceptible to discrimination." 534 F.2d at 813. The court went out of its way to explain how the defendants could have known the race of black victims who were not interviewed, such knowledge being an essential element to a showing of intent. See *Jefferson* v. *Hackney,* 406 U.S. 535 (1972). Finally the court explained that the small number of blacks hired, together with the use of subjective standards allowing a substantial opportunity for discrimination and other evidence, established a "prima facie case of discrimination," 534 F.2d at 813. This is a phrase which, in the context of this case, can only be understood as meaning a prima facie case of intentional discrimination.

Although all of this seems to have been understood below, petitioners in this Court urge that the Eighth Circuit decision was founded entirely on a finding of discriminatory effect. Proceeding from this misunderstanding, petitioners understandably find incomprehensible the Title VII effect rule as here applied,[16] the court of appeals' analysis of the evidence,[17] and the remedy ordered by the Eighth Circuit.[18] We believe that the decision below, properly understood as an intent case, presents neither the legal and factual difficulties pressed by petitioners nor the question regarding the constitutionality of Title VII which petitioners urge this Court to decide.

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[16] Brief for Petitioners, pp. 18-43.

[17] Id., pp. 44-60.

[18] Id., pp. 18-25.

II.

The Findings of Discrimination Below

When this case was tried in the district court in 1974, and when it was heard in the court of appeals in 1975, the defendants presented a single, consistent, though ultimately unpersuasive defense—that few blacks were hired by Hazelwood because the principals and other interviewers picked the best qualified applicants, and the vast majority of the best qualified applicants were white.[19] In this Court defendants have retained new counsel who, on examining a cold record, have advanced several entirely new assertions of fact as to what happened in Hazelwood, and to some extent St. Louis, in the years prior to trial. None of the numerous school board employees who testified, either at trial or by deposition, ever presented the explanation now urged by counsel for Petitioners in Part II of their brief. This theory was never presented to either court below. Under the circumstances we doubt that such new theories of fact can be asserted at this late date; we find unfair petitioners' complaint that the court of appeals "ignored" arguments and theories never there presented, and we believe the United States cannot reasonably be required to have rebutted at trial in 1974 a hypothetical defense first asserted by counsel for defendants in this Court in 1977.

Defendants' primary factual explanation in this Court is that very few blacks were hired in 1972-74 because very

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[19] We have lodged with the court copies of the defendants' opening statement at trial, the Defendants' Proposed Findings of Fact and Conclusions of Law, the Defendants' Brief and Memorandum In Support of Its Proposed Findings of Fact and Conclusions of Law, the Brief for Appellants in the Eighth Circuit, and the Petition for Rehearing the Court of Appeals.

few applied for positions at Hazelwood; assuming that no more than 60 applied during this period they urge that the proportion of black applicants hired was thus several times higher than that of white applicants. Brief for Petitioners, pp. 8, 10, 44-48. While the court of appeals below correctly held that the government made out a prima facie case of discrimination by showing the great disparity between the number of black teachers in Hazelwood and those in the surrounding county from which it drew over 70% of its new employees, 534 F.2d at 811-12, n. 7, defendants' evidence in no way rebutted that prima facie case. Defendants might have attempted to do so, for example, by establishing by direct and credible evidence both that (a) the proportion of blacks among applicants was substantially lower than the proportion of blacks in the labor market, and comparable to or lower than Hazelwood's hire rate, and (b) the small number of black applicants was not due to past recruiting practices, employment discrimination, or other non-neutral factors.[20]

With regard to the number of black applicants, counsel for defendants rely exclusively on the assumption that the

[20] See *Stewart* v. *General Motors Corp.*, 542 F.2d 445, 449 (7th Cir. 1976); *Senter* v. *General Motors Corp.*, 532 F.2d 511, 526-28 (6th Cir.), *cert. denied*, 50 L.Ed. 2d 150 (1976); *United States* v. *Chesapeake & Ohio Ry. Co.*, 471 F.2d 582, 586 (4th Cir. 1972); *Rowe* v. *General Motors Corp.*, 457 F.2d 348, 358 (5th Cir. 1972); *United States* v. *Carpenters Local 169*, 457 F.2d 210, 214 (7th Cir.), *cert. denied*, 409 U.S. 851 (1972); *United States* v. *Hayes Int'l Corp.*, 456 F.2d 112, 120 (5th Cir. 1972); *United States* v. *Ironworkers Local 86*, 443 F.2d 544, 551 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971); *Jones* v. *Lee Way Motor Freight Lines*, 431 F.2d 245, 247 (10th Cir. 1970), *cert. denied*, 410 U.S. 954 (1971). We believe that the taint need not be intentional. A policy against active recruiting, if it leads to a disproportionately white applicant flow, must, like a particular recruiting policy with that effect, or a test, be justified by business necessity. No such showing was made here, e.g., as to why defendants had never recruited at the predominantly black Harris Teachers College less than 10 miles from Hazelwood.

approximately 54 black applicants identified by the government for the years 1971-73 were the entire pool of such applicants, or close to it. In prefacing the government's case at trial, however, counsel for the United States expressly warned that the black applicants whom it would discuss were at best a fraction of the total:

> In view of the district's actions severely restricting the pool of available qualified black applicants and its practice of destroying application files after one year, it has not been possible to obtain facts on all or probably most black applicants to the district.
>
> However, we have been able to locate and identify at least fifty or sixty black applicants for 1972 and 1973 and 1973 and 1974 who, the evidence will show, applied for positions for which there were vacancies and that Hazelwood consistently hired white applicants either less or no better qualified for the vacancies.[21]

The government was able to identify only a small number of the black applicants because it was able to locate them only by sending FBI agents to interview applicants thought to be black. Defendants never suggested below that this group of 54 constituted all or most of the black applicants, never made below the calculations from this figure which lead them to assert a high proportion of black applicants were hired,[22] and cannot reasonably complain that the court of appeals "ignored" this "fact".[23] Even if this issue had been raised below, the government data did not purport to be a substantial portion of the total black applicants, and could not be so considered. Defendants,

[21] Transcript of March 25, 1974, p. 9.

[22] Brief for Petitioners, pp. 47-48.

[23] Id., pp. 44.

on the other hand, had ready access to far more direct and probative evidence as to the number of black applicants; the principals and supervisors who did the interviewing could by their testimony, based on personal knowledge, have offered significant proof as to what portion of the persons interviewed were black. Such testimony would have been of particular importance since the government contended that a significant portion of the discriminatory screening out of blacks occurred at the interview stage. Had there been such valuable evidence in the possession of the defendants, it would certainly have been introduced at trial.[24]

Defendants also offered no evidence to establish that a low level of black applicants, if it existed, was not tainted by present or past discriminatory practices. Defendants' counsel urges in this Court that there were only 54 black applicants in 1971-73, compared to a total of 7,800 applicants those three years.[25] If this were indeed the case, blacks would have accounted for less than 0.7% of all applicants for positions at Hazelwood, even though blacks were 15% of the teachers in St. Louis County, from which most of Hazelwood's new employees came. One third of Hazelwood's new employees come from St. Louis City, whose teachers are over 54% black and whose population is over 40% black.[26] The applicant flow asserted by defendant would mean, *inter alia,* that despite the thousands of black teachers in St. Louis virtually all the teachers in

[24] See *Pierre* v. *Louisiana,* 306 U.S. 354, 361-62 (1939).

[25] Brief for Petitioners, pp. 47-48. The total applicant number doubtless includes some duplications of whites who submitted or renewed their applications. There is no explanation as to how they were determined. Petitioners, also, do not in their calculations discount black teachers who were only hired after this suit was brought or include those black applicants who applied in more than one year. See 392 F. Supp. 1285. (Vina Jones).

[26] Statistical Abstract of the United States, 1973, p. 891.

the city seeking jobs in Hazelwood were white. Such a peculiar pattern of behavior would call for an evidentiary explanation, particularly in view of the fact that Hazelwood's past failure to hire blacks must have been common knowledge and is likely to have deterred black applicants. While a variety of other possible theories, most involving continuing effects of past discrimination, could be hypothesized to explain the alleged paucity of black applicants, the burden was on defendants to provide evidence to establish a neutral explanation, and that burden was neither met nor shouldered below. Certainly the United States cannot be faulted, as defendants seek to do in this Court, for having "failed" to show in the District Court in 1974 that there was some discriminatory origin of a small number of black applicants first asserted to exist in this Court several years later.

Defendants offer a related assertion of fact with regard to its failure to hire *any* blacks prior to 1969—that virtually no blacks applied during this period.[27] No employee of the defendant school board who testified, most of whose experience at Hazelwood began prior to 1969, stated there was any shortage of black applicants then. This era, moreover, was one in which Hazelwood was engaged in active recruiting, and thus the racial composition of the applicant group was directly under its control.[28] If there were a shortage of black applicants in this period it was certainly due to the fact that Hazelwood's recruiting was almost entirely limited to all-white or virtually all-white colleges, and that while the district recruited from schools in distant states it never sought applicants from the predominantly black Harris Teachers College less than 10 miles away in downtown St. Louis. Here again, the burden was

[27] Brief for Petitioners, pp. 58-59.

[28] 534 F.2d at 808-09.

on Hazelwood to offer evidence establishing both a low number of black applicants, and the absence of taint, and it did neither.

Finally defendants attack the inclusion of St. Louis City in the labor market with which Hazelwood's meager number of blacks was compared. The court below noted that approximately one third of the teachers hired by Hazelwood lived in St. Louis City when first hired by defendants, and Hazelwood does not deny that about half of all the teachers in St. Louis are black. 534 F.2d at 812, n. 7. Defendants did not raise this issue in the district court, a matter of some importance since it also involves factual assumptions not supported by the record; defendants' reference in their court of appeals brief to the inclusion of St. Louis, if an argument at all, certainly is not the contention urged here.[29]

(a) Defendants appear to argue that the large number of presently employed black teachers in St. Louis is unimportant because that figure is inflated by the City's active recruitment of black teachers from outside the state, whereas those hired from St. Louis by Hazelwood were persons who merely lived there but were not yet employed as teachers, presumable mostly new college graduates. This contention rests entirely on the assumption that Hazelwood is not hiring employed teachers away from the City of St.

[29] Brief of Appellees, p. 18:

"It is ironical that the Government would introduce Dr. Young as a witness to support its contentions. His further testimony indicated that his office maintained files with complete knowledge of the race of the applicants. Further, he stated that the Board of Education deliberately tried to maintain a ratio of 50% black and 50% white teachers. That in the last three years, the St. Louis Board of Education has hired approximately 55% black teachers. This is in the face of the Government's argument that a 16% teacher ratio should be maintained in the St. Louis area."

Louis and that few of the new teachers in St. Louis are black; these factual allegations were never made or proved below and are not supported by the record.

(b) Defendants seem to argue, in the alternative, that it cannot find many black teachers because St. Louis is getting them all, or, at least, St. Louis is getting all the black teachers who live in St. Louis. This factual claim, however, was never made or approved below, and no evidence was introduced, and no new factual assertion is made here, to explain why Hazelwood would always lose to St. Louis in the competition for blacks, why black college graduates would prefer to teach in St. Louis, or why black teachers in the St. Louis system would be less interested in transferring to Hazelwood than white St. Louis teachers.

(c) The government argued and the court of appeals found that the 15% black teacher ratio in St. Louis County was a reasonable standard against which to measure Hazelwood. The 15% standard was based on the 1970 census when blacks constituted about 40% of the St. Louis City teachers.[30] In arguing that the St. Louis figures are in some sense inflated defendants rely entirely on a statement made by a St. Louis school official in March of 1974 that "in the past few years" the city had shaped its recruiting and hiring policies so as to maintain an equal number of black and white teachers in the system.[31] Given the temporal limitation in the testimony, however, there is no reason to believe that this "recent" policy was in effect prior to 1970 or was responsible for the 1970 St. Louis figure, which was well under 50% black and which is the figure used by the court of appeals. Moreover, the testimony relied on does not indicate whether the recruiting

[30] 534 F.2d 811.

[31] App. 92-94.

and hiring are tilted to increase the number of blacks over what would otherwise have been hired, or to increase the number of whites. Since black teachers had risen to 54.5% of the St. Louis City school system by 1972-73,[32] maintaining a 50% white and black proportion would have required favortism for white applicants, not blacks.

Defendants in the trial court failed to introduce evidence which adequately rebutted the inference of purposeful discrimination raised by the government's evidence which showed a history of discriminatory practices, a hiring procedure susceptible to racial abuse, a revealing statistical disparity, and the clear disparate treatment of qualified black applicants who were never interviewed or hired. Petitioners' attempt to rebut that inference at this point with a conjectured statistical analysis cannot stand.

III.

Title VII's Prohibition Against Unnecessary Practices With Discriminatory Effects Is Constitutional

Petitioners urge that "no decision of the Court . . . holds," that "mere disparate treatment of blacks (or others entitled to the protection of Title VII) in employment practices suffices to make out a case under Title VII," and that both *General Electric Co.* v. *Gilbert,* 97 S.Ct. 401, 408-09 (1976), and *Washington* v. *Davis,* 426 U.S. 229, 246-47 ((1976), erred in suggesting that this matter was decided earlier. They insist both *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971) and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975) were, insofar as they dealt with testing and educational requirements, really intent cases, and that the tests and requirements were there disapproved be-

[32] Plaintiff's Exhibit 54.

cause they froze blacks into positions to which they had been assigned on the basis of race. Brief for Petitioners, p. 41, n. 13. In *Griggs,* however, the test was only used for employees hired after 1965, when the district court found there was no intentional discrimination in assignment, 401 U.S. at 427, and this Court's disapproval of the company's education requirement was not based merely upon its effect on, or limited to, pre-1965 hires, but applied to all uses of such requirements "that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability." 401 U.S. at 432. Similarly, this Court's decision in *Albemarle* was not limited to the application of the Beta and Wonderlic tests to blacks previously assigned to low skill lines of progression and departments on the basis of race, but extended to all uses of those tests. 422 U.S. at 425-436.

Petitioners suggest, in the alternative, that Congress never intended to extend this aspect of Title VII to state and local governments, emphasizing that the legislative history of the 1972 amendments noted that racial discrimination by state and local governments was already prohibited by the Fourteenth Amendment. Brief of Petitioners, pp. 38-41. The legislative history cited by petitioners, however, does not assert that the substantive rights under Title VII are identical to those under the Equal Protection Clause. The statutory language of Title VII draws no distinction whatever between the employment practices prohibited on the part of private and public employers. Both the House and Senate Reports, in explaining the application of Title VII to state and local governments, expressly noted the need to stop the use of "invalid selection techniques," [33] i.e. tests and educational requirements that

[33] S. Rep. No. 92-415, 92nd Cong., 1st Sess., 10 (1971); H.R. Rep. No. 92-238, 92nd Cong., 1st Sess. 17 (1971).

are not, in fact, job-related; so did Congressman Perkins,[34] the House floor manager and Senator Williams,[35] the Senate floor leader.

Third, petitioners suggest that the effect rule is unconstitutional as applied to any employer because it requires that applicants be hired on the basis of race. Brief for Petitioners, p. 22. *Griggs* and its progeny do not require employers to hire blacks in exactly the proportion of black applicants or residents or members of the work force, or to abandon any selection procedure which would yield any other proportion; a test or other requirement that has an adverse effect on a minority group may nonetheless be used if the employer can demonstrate that the standard is job-related and that no alternative selection procedures exist without that effect. *Albemarle Paper Co.* v. *Moody*, 422 U.S. at 429-435. It is, of course, true that Title VII encourages an employer to inquire whether its selection procedures have such an adverse racial impact, but such a salutary undertaking is well within the benign considerations of race permitted, and at times required, by the Fourteenth Amendment. *United Jewish Organizations of Williamsburg* v. *Carey*, 45 U.S.L.W. 4221 (1977).

Title VII, insofar as it prohibits certain discriminatory effects, was clearly within the power of Congress to enact under Section 5 of the Fourteenth Amendment, Section 2 of the Thirteenth Amendment, and the Commerce Clause. There is no area of federal-state relations in which an extension of overriding federal control is more firmly established, in our history and in the Constitution, than that of discrimination. The fundamental constitutional and

[34] Legislative History of the Equal Employment Opportunity Act of 1972 (hereinafter cited as "Legislative History"), 196 (1972).

[35] Id., p. 1114.

political theory of the abolitionists who brought about the end of slavery, and who, in Congress, drafted the Thirteenth, Fourteenth, and Fifteenth Amendments and the Civil Rights Acts of 1866 and 1871, was that eradicating discrimination in and by states and localities was a responsibility which the national government could and should assume.[36] No form of discrimination is closer to that which the Thirteenth Amendment forbade, and no form of discrimination is more clearly a "badge of slavery", than racial discrimination in employment. Moreover, the historical evidence indicates that the intent of the framers was for Congress, not merely the courts, to play the major role in determining what legislation would best enforce the protections of the Amendments.[36a]

Title VII is not, as petitioners suggest, a wide ranging untried and burdensome new substantive standard far from the clear meaning of the Equal Protection Clause. The effect rule under Title VII, as elaborated by *Griggs* and its progeny, is a precise prohibition against a relatively narrow class of hiring and promotion standards—particularly tests and educational, height and weight requirements—which are not related to the particular job at issue. This validation defense assures that Title VII will not deprive any employer, private or public, of a personnel device actually necessary to its operation, and thus places no significant burden on an employer.[37] Congress

[36] See generally tenBroek, Equal Under Law (1951).

[36a] Bickel, *The Original Understanding and the Segregation Decision*, 69 Harv. L. Rev. 1, 63-64 (1955). See *Katzenbach* v. *Morgan*, 384 U.S. 641, 648-51 (1966).

[37] The burdens complained of at pp. 21-22 of the Brief for Petitioners are the normal incidents of a finding of discrimination and have nothing to do with the effect rule as such.

Petitioners also appear to misunderstand the remedy ordered by the court of appeals in this case which makes clear that it was remedying purposeful discrimination by limiting the potential for

only applied this requirement to state and local governments after 7 years of experience in the private sector demonstrated that the effect rule was both necessary and workable.

Katzenbach v. *Morgan*, 384 U.S. 641 (1966) and *Oregon* v. *Mitchell*, 400 U.S. 112 (1970) make clear that Congress may, in appropriate cases, prohibit under § 5 of the Fourteenth Amendment conduct not otherwise forbidden by the Amendment. Compare *Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959). Congressional action establishing substantive standards under Section 5 is most clearly warranted in the penumbra of the Amendment, where either the statutory rule has historically or reasonably been regarded as the constitutional rule—even though ultimately held not to be so—or the facts which Congress has declared a statutory violation would have been significant evidence of a constitutional violation. Both circumstances are present here. That effect might be both necessary and sufficient to establish a constitutional violation was suggested by this Court as recently as *Palmer* v. *Thompson*, 403 U.S. 217 (1971), and both *Washing-*

racial abuse. Their claim that the court interfered excessively with its necessary operations and ordered racially discriminatory hiring is just unfounded. This is shown by what the Court did not do as well as by what it did. With the exception of the 16 applicants who were discriminated against, the court did not order Hazelwood to hire any black teachers. Neither did it order them to establish any particular set of standards or criteria or to engage in any recruiting.

The court's remedy allows Hazelwood to structure its hiring procedures in any way that it chooses and to establish whatever criteria it wants to apply. The court's order interferes with Hazelwood's operations only by requiring it not to discriminate in the operation of those procedures and the application of those criteria. Reporting to the Justice Department and maintaining a record of the fate of black applicants make it possible to check whether these standards have been applied in a fair and non-discriminatory manner.

ton v. *Davis*, 426 U.S. 229, 241 (1976) and *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 45 U.S.L.W. 4073, 4078 (1977) indicate that the extent to which a disputed action has a discriminatory effect is often the most important evidence of the underlying intent.

As a matter of purely constitutional law the use by a state or local government of a non job-related selection procedure with an adverse impact on minorities would, under a variety of circumstances, be impermissible. In a significant number of cases in which an employer uses a test or other device which excludes disproportionate numbers of blacks or other minorities, but which is not in fact job related, the employer is intentionally employing that procedure to discriminate. There are doubtless other cases in which such procedures, however well intentioned, have the effect of locking minority employees into jobs to which they were initially assigned on the basis of race. Since some selection procedures have an adverse impact on minorities because of inadequate education, *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 430 (1971), and since that inadequate education is often itself due to past racial or other discrimination by state and local governments, *Gaston County* v. *United States*, 395 U.S. 285 (1969), the use of such procedures by a state or local government will involve a problem of past intentional discrimination not applicable to private employers. We believe that Congress, rather than requiring detailed proof that a selection procedure fell into one of these categories of unconstitutional action, could reasonably establish a simple rule prohibiting the use of such procedures if they were not job related. Title VII, viewed in this light, falls within the general rule that "the inclusion of a reasonable margin to insure effective enforcement will not put upon

a law, otherwise valid, the stamp of invalidity." *Euclid* v. *Ambler Realty,* 272 U.S. 365, 388-89 (1926).[37a] This rule clearly applies to the congressional Fourteenth Amendment enforcement power,[37b] which includes the power to prohibit as a preventive measure under Section 5 that which would not be prohibited by Section 1 of its own force. Compare *Katzenbach* v. *Morgan* and *Oregon* v. *Mitchell, supra,* with *Lassiter* v. *Northampton Election Board, supra.*

Title VII is also well within the power of Congress under the Commerce Clause. *National League of Cities* v. *Usery,* 426 U.S. 833 (1976), established that Congress does not have the same unfettered control over state and local government activities affecting interstate commerce that it has over private businesses, and that a statute proper as to private industry may be invalidated if it interferes excessively with the "integral governmental functions" of states or cities. 426 U.S. at 851. The constitutionality of such legislation depends upon "the degree of intrusion upon the protected area of state sovereignty" and the extent to which its object is, as a legal or practical matter, an area of substantial federal interest. 426 U.S. at 852-53. The federal interest in protecting racial minorities is well

[37a] The Court in *Euclid* further stated that "such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation." *Id.*

[37b] See Orloski, *The Enforcement Clauses of the Civil War Amendments: A Repository of Legislative Power,* 49 St. John's L. Rev. 493, 506-507 (1975); Yackle, *The Burger Court, "State Action," and Congressional Enforcement of the Civil War Amendments,* 27 Ala. L. Rev. 479, 562-66 (1975); Cohen, *Congressional Power to Interpret Due Process and Equal Protection,* 27 Stan. L. Rev. 603, 613-16 (1975); Note, *Federal Power to Regulate Private Discrimination: The Revival of the Enforcement Clauses of the Reconstruction Era Amendments,* 74 Colum. L. Rev. 449, 505-10 (1974).

established in our constitutional system, and transcends the type of concern at issue in *National League of Cities.* Conformity with Title VII's effect rule, unlike the minimum wage in *National League of Cities,* will not impose any costs on complying jurisdictions. Since Title VII prohibits only selection practices which are not job related, compliance will not interfere with any legitimate state or local policies or practices and may well contribute significantly to the efficacy of their personnel methods.

Independent of its other constitutional bases for actions, Congress clearly could, and in this case intended to, require compliance with the effect rule of Title VII under its spending power. Senator Williams, the floor manager, explained at the outset of the Senate debate on extending Title VII to state and local employees this rationale and ground for congressional action:

> The Federal Government's interest in state and local government operations cannot be underestimated. There are approximately 10 million employees of state and local political subdivisions. The Federal Government alone will distribute more than $43 billion of its tax revenues to these levels in the next year . . .
>
> Mr. President, it is clear that with the expenditure of such sums comes the responsibility of making sure that the distribution and use of the funds is without discrimination. The failure to have adequate minority representation in those agencies of Government responsible for expending those funds is an element of this discrimination.[38]

Senator Williams then placed in the Congressional Record a lengthy memorandum detailing the various types of fed-

[38] Legislative History, pp. 1114-15.

eral aid being provided to state and local governments.[39] Senator Williams also placed in the record portions of a report of the United States Commission on Civil Rights urging federal action on this basis.[40] The Hazelwood School District is among the thousands of units of state and local government receiving such federal aid and in recent years has sought and accepted more than $500,000 annually in federal grants. Agencies accepting such funds are, as a consequence, subject to a host of federal statutes and regulations not remotely related to their constitutional duties, and Hazelwood, like the others, must accept such additional requirements.

IV.

The Remedy Afforded the 16 Victims of Discrimination

Petitioners devote 17 pages of their brief to an argument that the court of appeals erred in finding there was discrimination against the 16 black applicants to whom specific relief was awarded. Brief for Petitioners, pp. 61-77. Petitioners urge that, if the Court rejects their argument concerning the constitutionality of Title VII, the case nonetheless be "remanded for reconsideration of the alleged individual cases of discrimination." Id., p. 78. Petitioners candidly concede, however, that certiorari was purposely not sought with regard to this aspect of the Eighth Circuit's decision. Id., p. 62. Under these circumstances the Court can neither consider nor resolve the issues deliberately abandoned by petitioners.

[39] *Id.*, pp. 1138-50.

[40] *Id.*, 1123.

V.

Affirmative Action Is Required to Disestablish the Pattern of Racially Identifiable School Districts

As we noted *supra,* pp. 2-6, Missouri prior to 1954 mandated the assignment of teachers among St. Louis county school districts on the basis of race, and forbade the hiring of black teachers by Hazelwood and 22 other districts. The result of this *de jure* faculty segregation was that both the racial composition of student bodies, and which districts operated schools for black students at all, could be readily identified by the race of the faculty. Such a pattern of faculty hiring and assignments is among the practices which are forbidden by *Brown* and which the school officials involved are required to take steps to disestablish. *United States* v. *Montgomery County Board of Education,* 395 U.S. 225 (1969).

Even if Hazelwood abandoned in the early 1970's or earlier its past policy of hiring only whites, that would not be sufficient to satisfy its constitutional obligation under *Brown.* In *Green* v. *School Board of New Kent County,* 391 U.S. 430 (1968), this Court rejected the argument that a school board could meet its responsibilities with regard to student segregation by merely opening "the doors of the former 'white' school to Negro children," particularly since this placed the burden of desegregation on black parents and children who were required to take the initiative in disestablishing the dual system. 391 U.S. at 438, 441. *Green* charged the school boards with an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 438. *Swann* v. *Charlotte-Mecklenburg,* 402 U.S. 1 (1971), made

clear that this means that, to the extent reasonably feasible, pupil assignments must be modified to disestablish any pattern of racially identifiable schools.

Swann also held that a similar obligation applied to faculties:

> Independent of student assignment, where it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown. 402 U.S. at 18.

There is no reason to distinguish the *de jure* restriction of black teachers to particular schools from the *de jure* allocation of black teachers among particular districts where, as here, those districts are adjacent or in reasonable proximity to each other. In the instant case there are 9 school districts with over 3,000 teachers adjacent to St. Louis City, all of which were forbidden by law to hire black teachers prior to 1954. These are precisely the circumstances in which *Swann* requires that affirmative action be taken by local officials to disestablish the pattern of racially identifiable school districts.[41]

The record clearly establishes that this was not done. As of 1972-73, 4 of the 9 adjacent school districts still had no black teachers, and 2 others, including Hazelwood, had 1% or less. The only districts with significant numbers of

[41] Since there are 9 such adjoining districts it is not necessary for the Court to consider whether the other 14 districts in the county have such a geographical proximity to St. Louis, Kinloch, or the new heavily black districts as to require similar affirmative action.

black teachers are those that have also acquired since 1954 substantial black populations. The simple system of racial identifiability that had existed in 1954, rather than withering away, had grown in sophistication and complexity, now indicating, not merely whether a district had black students, but also roughly how many. See pp. 4-5, *supra.*

The conduct of the Hazelwood officials in this case bears a striking resemblance to that disapproved in *Green.* Although the district claims to have had a nominal policy of non-discrimination since at least the early 1960's, no black teacher was hired until 1969, some 15 years after *Brown.* Since then the black faculty has remained at a token level in the school district. The critical hiring decisions, based on broad and unreviewed discretion, are made by principals and supervisors who, because of Hazelwood's past discrimination, are all white. The primary defense advanced by Hazelwood in this Court is that it has opened its doors to black teachers, but that very few teachers have applied. Hazelwood's conduct is the precise counterpart in the area of faculty segregation to the "freedom of choice" plan found wanting in *Green.* Such a passive approach, while not invalid *per se,* is only constitutionally acceptable where it in fact succeeds in disestablishing the pattern that arose under the practices forbidden by *Brown.* Here, as in *Green,* it has not succeeded.

Green and *Swann* thus provide a constitutional basis for requiring appropriate remedial action by Hazelwood regardless of whether the school district has engaged in active discrimination in recent years. This theory of the case was expressly advanced by the United States below.[42]

[42] App. 3, 4; Memorandum In Support of Plaintiff's Proposed Findings of Fact and Conclusions of Law and Proposed Order, pp. 6-7. This Memorandum urged that in view of Hazelwood's affirmative duty under *Green* "a late blooming racial neutrality on

The decision of the court of appeals can be affirmed on this ground alone, without reaching the Title VII issue, and should be affirmed on this ground even if the government's Title VII claim is not upheld.

We believe that, judged by the requirements of *Green*, as by those of Title VII, the remedy ordered by the court of appeals is seriously deficient. Hazelwood is directed to cease discrimination, to adopt more objective standards, and to make periodic reports. The only specific substantive relief ordered is the hiring of 16 particular victims of past discrimination, a number so small as to be insufficient to materially increase the proportion of black teachers at Hazelwood. Although the government, at trial, sought affirmative relief in the form of goals and timetables to increase the number of black teachers,[43] the issue of relief, however, was not briefed on appeal. With the exception of the 16 rejected blacks the Eighth Circuit's order is entirely prospective, and does not seek to redress the effects of past practices. We note, however, that the opinion of the court of appeals does not purport to limit the ability or duty of the district court to order whatever additional relief may be warranted by the circumstances.

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the part of District personnel in hiring decisions, even if it were present in this case, which we do not concede, would not be sufficient to establish absence of a violation."

[43] Memorandum In Support of Plaintiffs' Proposed Findings of Fact and Conclusions of Law and Proposed Order, pp. 10-13. The United States suggested as a goal that Hazelwood hire at least 1 black for every 3 whites until the Hazelwood Faculty reached 15% black. *Id.*, p. 12.

CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be affirmed.

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Supreme Court, U. S.
FILED
APR 5 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT, *et al.*,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-255

HAZELWOOD SCHOOL DISTRICT, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE

Interest of Amicus*

The American Civil Liberties Union

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* Letters of consent to the filing of this brief, from counsel to the petitioners and counsel for the United States, will be lodged with the Clerk of the Court.

is a nationwide, non-partisan organization of over 250,000 members dedicated solely to defending the guarantees of the Bill of Rights. Central among those guarantees is the right of all persons to equal treatment under the law. In a variety of cases before this Court and other tribunals, the ACLU has defended the rights of those who have been discriminated against because of their race. We have also urged the broad power of Congress to seek to remedy the causes and effects of such prohibited discrimination.

The issues in this case involve the constitutional power of Congress to deal with discrimination in employment by state and local agencies. For the reasons set forth in Point II, infra, we believe that Congress has such power. But, as we suggest in Point I, infra, we do not think that it is necessary for the Court to reach such issues. We believe that the record as a whole reflects purposeful racial discrimination of the kind which violates constitutional guarantees, thus rendering unnecessary consideration of whether the different standards of Title VII can constitutionally be applied to state and local governmental bodies.

CONSTITUTIONAL PROVISIONS INVOLVED

In addition to the constitutional and statutory provisions set forth by the parties, we submit that this case also involves the Thirteenth Amendment to the

Constitution, which provides, in pertinent part, as follows:

> "SECTION 1. Neither slavery nor involuntary servitude...shall exist within the United States, or any place subject to their jurisdiction.
>
> SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

Statement of the Case

This case involves a Court of Appeals ruling that the Hazelwood School District was guilty of racial discrimination in its employment practices, pursuant to Title VII of the Civil Rights Act of 1964, as amended.

SUMMARY OF ARGUMENT

I.

This Court need not resolve questions concerning the proper reach of the 1972 amendments to Title VII because, on the basis of the record, the Court of Appeals was justified in finding that Hazelwood had engaged in intentional racial discrimination in the hiring of its teachers.

Statistical evidence showing a racially discriminatory effect can be relied on to establish a racially discriminatory purpose, particularly when a challenge is being made to a policy of discrimination, and where the evidence, in addition to showing statistical disparity, also indicates a history of past discrimination and subjective selection procedures which afford the opportunity for racial discrimination. Washington v. Davis, 426 U.S. 229 (1976); Village of Arlington Heights v. Metropolitan Housing Development Corp., ___ U.S. ___, 45 U.S.L.W. 4073 (Jan. 11, 1977); Casteneda v. Partida, ___U.S.___, 45 U.S.L.W. 4302 (March 23, 1977). Accordingly, Hazelwood was not found to have engaged in racial discrimination solely because of "disproportionate racial impact."

Moreover, the evidence conclusively established that Hazelwood was practicing intentional racial discrimination, in that it had imposed a maximum quota on the percentage of black teachers it would hire, coinciding with the percentage of black students enrolled in its schools.

Since the evidence thus shows that Hazelwood was practicing intentional racial discrimination in the hiring of its teachers, there is no issue of substance to be reviewed by this Court, and the writ of certiorari should be dismissed as having been improvidently granted.

II.

It is within the power of Congress to prohibit what it has found to constitute racial discrimination in employment when practiced by state and local governments in the same manner as when practiced by private employers.

A. Implementation of the national policy of equal employment opportunity established by Title VII and extended to state and local governments by the Equal Employment Opportunity Act of 1972 requires that state and local governments be made subject to the provisions of Title VII in the same manner as private employers. The thrust of this policy is directed to the "consequences of employment practices, not merely the motivation." Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971). If this Court were to hold that Title VII cannot constitutionally be applied to employment practices of state and local governments absent a showing that they were motivated by a racially discriminatory purpose, c.f., Washington v. Davis, 426 U.S. 229 (1976), the national policy of equal employment opportunity would be completely undercut, and state and local governments would be free to engage in what Congress has proscribed on the part of private employers. Before this Court holds that such an anomalous result is required by the Constitution, it must satisfy itself that Congress may not, under the exercise of any of its enumerated powers, prohibit discrimination in employment when engaged in by state and

local governments in the same manner as when engaged in by private employers.

B. As applied to state and local governments, Title VII is a valid exercise of the commerce power, because its provisions do not improperly impair the exercise of "state sovereignty." The "state sovereignty" exception to the otherwise plenary power of Congress over interstate commerce that was recognized in National League of Cities v. Usery, 426 U.S. 833 (1976), only applies to interference with "essential decisions regarding the conduct of integral governmental functions." The exercise of "state sovereignty" does not require that the states practice what Congress has found to constitute racial discrimination. The application of Title VII to state and local governments will not impose substantial increased costs on the carrying out of governmental functions, nor will it "displace state policies regarding the manner in which they will structure delivery of those governmental services which their citizens require." Since this is so, the "state sovereignty" exception of Usery is inapplicable, and Congress may proscribe racial discrimination when practiced by state and local governments in the same manner as when practiced by private employers. Fry v. United States, 421 U.S. 542 (1975); United States v. California, 297 U.S. 175 (1936).

C. Insofar as Title VII prohibits discrimination on the basis of race, it

may be sustained in its application to state and local governments under the powers granted to Congress by §2 of the Thirteenth Amendment. Congress has broad powers under §2 of the Thirteenth Amendment to eliminate all "badges and incidents of servitude," and to decide what these "badges and incidents" are. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). Pursuant to that power it can proscribe all employment practices that have a racially discriminatory effect. Since its enforcement powers under §2 of the Thirteenth Amendment are in no way related to "state action," or to providing a remedy for what would otherwise constitute a violation of §1 of the Thirteenth Amendment, it can reach conduct of state and local governments that might not independently be found to be unconstitutional. Nor are there considerations of "state sovereignty" that can affect the exercise of Congress' enforcement power under the Civil War Amendments. Fitzpatrick v. Bitzer, ___ U.S. ___, 49 L.Ed.2d 614 (1976).

D. Under the powers granted to Congress by §5 of the Fourteenth Amendment, Congress can proscribe employment practices by state and local governments that have a racially discriminatory effect on blacks without regard to whether these practices independently would be found unconstitutional by the courts as having been motivated by an intent to discriminate.

The power of Congress under §5 of the Fourteenth Amendment is not limited to providing a remedy for what independently would be found by the courts to be violation of §1 of the Fourteenth Amendment. Katzenbach v. Morgan, 384 U.S. 641 (1966). When Congress acts under its Fourteenth Amendment enforcement powers, and by such action does not contravene a specific constitutional limitation on congressional power, c.f., Oregon v. Mitchell, 400 U.S. 112 (1970), the sole question for the Court is whether the legislation represents a "necessary and proper" exercise of that power. Katzenbach v. Morgan, supra. The prohibition of employment practices that have a racially discriminatory effect is clearly a "necessary and proper" exercise of Congress' Fourteenth Amendment enforcement powers, since it is "not prohibited by but is consistent with 'the letter and spirit of the Constitution.'" Katzenbach v. Morgan, supra.

I.

THE COURT OF APPEALS WAS JUSTIFIED IN FINDING THAT HAZELWOOD HAD ENGAGED IN INTENTIONAL RACIAL DISCRIMINATION IN THE HIRING OF ITS TEACHERS.

The petitioner argues, in effect, that since the United States did not make out a case of intentional constitutional discrimination within the meaning of Washington v. Davis, 426 U.S. 229 (1976) and Village of Arlington Heights v. Metropolitan Housing Development Corporation, ___ U.S. ___, 45 U.S.L.W. 4073 (Jan. 11, 1977), then this Court must resolve the more difficult issues concerning the application of Title VII to state and local governments. We submit that those latter issues need not be reached, because under the standards required for a showing of purposeful discrimination, as identified in Washington, Arlington Heights, and most recently in Casteneda v. Partida, ___ U.S. ___, 45 U.S.L.W. 4302 (March 23, 1977), the Court of Appeals was clearly justified in finding that Hazelwood had engaged in intentional racial discrimination in the hiring of its teachers. Since this is so, it is not necessary to consider any questions relating to the power of Congress to prohibit practices that might not independently be found by the courts to amount to a constitutional violation. Similarly, since the evidence establishes that Hazelwood was guilty of a constitutional violation, this case is not an

appropriate vehicle for this Court to consider any questions relating to the standard of proof necessary to make out a Title VII violation. This being so, the amicus curiae would respectfully suggest that the writ of certiorari be dismissed as having been improvidently granted.

Hazelwood argues that proof of a racially discriminatory purpose, which is required to sustain a constitutional violation, "ordinarily cannot be inferred from statistics showing a racially discriminatory effect alone." (Pet. Cert., p. 9). While this statement reflects this Court's recent decisions, it does not resolve the issues in this case. For this Court has made clear, most recently in Casteneda v. Partida, that although a disproportionate impact alone will normally not be sufficient to establish a case of purposeful discrimination under the Constitution, a relevant statistical disparity with respect to a minority group, coupled with other factors, will be adequate to show a constitutional violation. In Casteneda v. Partida, a jury discrimination case, the Court held that where there is statistical evidence of "substantial under-representation," and there is "a selection procedure that is susceptible to abuse or not racially neutral," that procedure "supports the presumption of discrimination raised by the statistical showing." 45 U.S.L.W. at 4305. "Once the defendant has shown substantial under-representation of

his group, he has made out a prima facie case of discriminatory purpose, and the burden then shifts to the State to rebut that case." Ibid. And in Arlington Heights, the court noted that one of the factors which could be looked to, beyond statistical disparity, was the "historical background" of the challenged governmental decision.

We submit that in this case such additional factors are present and, when combined with the statistical showing, support the finding of purposeful racial discrimination. Here, the presumption of discriminatory purpose was buttressed by evidence of pre-Title VII racial discrimination in Hazelwood's hiring of teachers, by evidence showing the rejection of particular black applicants in favor of less-qualified white ones, and by the existence of selection criteria which were highly subjective. As the Court of Appeals held: "...the statistical evidence demonstrating a disparity between the proportion of blacks in Hazelwood's work force and the proportion of blacks in the relevant labor market, when considered in light of Hazelwood's hiring procedures involving the use of vague and subjective criteria, indicate a prima facie case of a pattern or practice of employment discrimination in violation of Title VII." 534 F.2d at 805. The Court then also pointed to the history of pre-Title VII discrimination and the rejection of 16 better-qualified black applicants. Therefore, the Court

of Appeals did not rely solely on disparate impact, as was the case in Washington v. Davis, but found the existence of racial discrimination on the basis of a number of factors. That approach was perfectly consistent with the teaching of Washington, Arlington Heights, and Casteneda with respect to proof of purposeful discrimination violative of the Constitution. For that reason, questions of the appropriate reach of the 1972 amendments to Title VII beyond that need not be addressed.

Those issues need not be reached for another reason. The evidence in the record - in this instance the evidence introduced by Hazelwood itself - conclusively established an intent to discriminate. Stated simply, Hazelwood was imposing a maximum quota on the percentage of black teachers it would hire, limiting that percentage to the percentage of black students enrolled in the Hazelwood system. A more flagrant showing of discriminatory purpose cannot be imagined. The only problem here was that neither Hazelwood nor the District Court apparently realized that this practice amounted to purposeful racial discrimination, and the Court of Appeals as well failed to give sufficient weight to the exact correlation between the percentage of black teachers and the percentage of black students in the Hazelwood school system.

What the Constitution - as well as Title VII - requires is that blacks have

the same opportunity for governmental employment as do whites. To limit the opportunity of black teachers to be employed in the Hazelwood school system by the percentage of black students enrolled in that system - to impose a maximum quota upon the employment of black teachers - is the most flagrant example of racially discriminatory purpose that can be imagined. Indeed, even in systems that have been found guilty of practicing de jure segregation, all teachers must be hired on a non-discriminatory basis without regard to the black-white student composition of the district as a whole, and assigned to schools in proportion to the black-white teacher ratio without regard to the black-white student composition of the school to which they are assigned. United States v. Montgomery County Board of Education, 395 U.S. 225 (1969). The imposition of a maximum quota on the percentage of black teachers that would be hired by Hazelwood is so clearly unconstitutional that in the present case any reliance on workforce statistical disparity was completely unnecessary.

Far from condemning the imposition of a maximum quota and the failure to hire teachers without regard to race, however, the District Court relied on the fact that the percentage of black teachers employed by Hazelwood coincided exactly with the percentage of black students in attendance as a basis for finding that Hazelwood was not practicing racial discrimination. It

noted that in 1970-71, the six black teachers hired by Hazelwood comprised less than one percent of its total faculty, but that, "the number of black students enrolled during that period was likewise only one percent of the total district attendance." 392 F.Supp. at 1287. It then noted that, "In 1973 the ratio of black teachers increased to 2%, consistent with a black enrollment in that year of 576 out of 25,166 total students." Id. It concluded that, "These figures do not establish the existence of statistical discrimination within the Hazelwood district." Id. at 1287-1288. This conclusion is plainly incredible and can be explained in no other way than being the result of a complete misunderstanding of the elementary legal principles applicable to claims of racial discrimination. The Court of Appeals similarly failed to appreciate the significance of this evidence and discounted it, observing that, "The level of black student enrollment in Hazelwood schools sheds no light whatsoever upon the dispute before us, and the district court clearly erred in absolving Hazelwood of unlawful employment practices on the basis of the paucity of black students in the Hazelwood schools." 534 F.2d at 812.

With all due respect to the Court of Appeals, the level of black teacher employment in Hazelwood, when tied inextricably to the level of black student enrollment, indeed "sheds light upon the dispute before us." It establishes conclusively that

Hazelwood was practicing the most flagrant form of intentional, deliberate and calculated racial discrimination in the hiring of its teachers. It also provides an explanation for why Hazelwood did not hire the 16 black teachers found by the Court of Appeals to have been rejected in favor of whites with lesser qualifications. Hazelwood had already reached its "black quota," and until more black students enrolled in Hazelwood, there would be no increase in the number of black teachers. The District Court not only erred in "absolving Hazelwood of unlawful employment practices on the basis of the paucity of black students in the Hazelwood schools." It erred more seriously - and in this respect so did the Court of Appeals - in not condemning forthwith the racial discrimination that was "as plain as the nose on one's face."

Since the undisputed evidence, totally apart from the statistical workforce disparity, conclusively establishes that Hazelwood was guilty of practicing the most flagrant form of racial discrimination in the hiring of its teachers - the imposition of a maximum quota on the percentage of black teachers that would be hired - there is no issue of substance to be reviewed by this Court, and the writ of certiorari should be dismissed as having been improvidently granted.

II.

IT IS WITHIN THE POWER OF CONGRESS TO PROHIBIT WHAT IT HAS FOUND TO CONSTITUTE RACIAL DISCRIMINATION IN EMPLOYMENT WHEN PRACTICED BY STATE AND LOCAL GOVERNMENTS IN THE SAME MANNER AS WHEN PRACTICED BY PRIVATE EMPLOYERS.

A. The implementation of the national policy established by Congress with respect to equal employment opportunity requires that this policy be fully applicable to the employment practices of state and local governments.

The national policy established by Congress under Title VII was to "achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees;" Title VII requires the "removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." Griggs v. Duke Power Co., 401 U.S. 424, 429, 431 (1971). By the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. §2000e(a), Congress extended this national policy to the employment practices of state and local governments, and viewed this extension as crucial if that national policy were ever to be implemented fully. As

was noted in the Report of the House Education and Labor Committee, House Report No. 92-238, U. S. Code Cong. & Admin. News, 92nd Cong., vol. 2, 2137, as of 1971, approximately 10.1 million persons were employed by state and local governmental units, an increase of over 2 million employees since 1964, and employees of state and local governments constituted the only large group of employees in the nation who were almost entirely exempt from federal non-discrimination protections. The Committee Report documented the widespread discrimination against blacks and other racial minorities in state and local governmental employment, and concluded that this discrimination was inconsistent with the national policy of equal employment opportunity. Id. at 2153. It also observed that:

> "The problem of employment discrimination is particularly acute and has the most deleterious effect in these governmental activities which are most visible to the minority communities (notably education, law enforcement, and the administration of justice) with the result that the credibility of the government's claim to represent all the people equally is negated." Id. at 2153.

In order to implement fully the national policy with respect to equal employment

opportunity, it was clearly necessary that state and local governments be included within the provisions of Title VII in the same manner as private employers. The power of Congress to subject state and local governments to the provisions of Title VII was recognized by this Court in Fitzpatrick v. Bitzer, ___ U.S. ___, 49 L.Ed.2d 614 (1976), when it held that the Eleventh Amendment presented no obstacle to the award of back pay and attorneys fees against the states in a Title VII action.

The serious implications for the implementation of this national policy that would result if Hazelwood's position were accepted by this Court are frankly stated in Hazelwood's observation that, "There is no doubt that such a showing of statistical disparity as was made in Hazelwood's case would, if the statistical analysis were valid, support a finding of a prima facie violation of Title VII by an employer than a state body," and its resulting argument that this showing of statistical disparity cannot constitutionally be applied to Hazelwood because it is a state agency. (Pet. Cert., pp. 8-10). The key to the implementation of the national policy reflected in Title VII is the elimination of employment practices that have a racially discriminatory effect. As this Court stated in Griggs, "The Act proscribes not only overt discrimination but also practices that are fair in form,

but discriminatory in operation." 401 U.S. at 431. And as it also noted in that case, "Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation." Id. at 432.

There are three levels of discrimination proscribed by Title VII: (1) First-level or overt discrimination, such as refusal to hire or to promote on the basis of race, which is often indicated by evidence showing a statistical disparity between the percentage of blacks in the workforce and the percentage of blacks employed by the employer. See e.g., Robinson v. Union Carbide Corp., 538 F.2d 652 (5th Cir. 1976); (2) Second-level discrimination, such as the use of facially neutral, but non-job-related tests or other conditions of employment that operate disproportionately to exclude blacks. See e.g., Griggs v. Duke Power Co., supra; Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975); (3) Third-level discrimination, such as the maintenance of seniority systems that "lock in" the victims of prior discrimination. See e.g., Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir. 1974).

The thrust of Hazelwood's argument, if accepted by this Court, would be to make Title VII completely inoperative to prevent second and third level discrimination by state and local governments.

Hazelwood asks the Court to decide that Congress does not have the power to prohibit employment practices of agencies of state and local governments "in the absence of proof that the agency purposely discriminated against applicants on the basis of race." (Pet. Br., p. 3). If the Court so holds, then the principles established in Griggs and Albemarle and in other Title VII cases decided by this Court and by the lower federal courts, invalidating second and third level discrimination, would simply be inapplicable to the employment practices of state and local governments, and instead of a uniform national policy with respect to equal employment opportunity, there would be one standard for private employers and an entirely different standard for state and local governments. Private employers could not use practices that are "fair in form, but discriminatory in operation," Griggs at 431, such as tests and conditions of employment that were not job-related and disproportionately excluded blacks, but state and local governments would be free to reimpose all "artificial, arbitrary, and unnecessary barriers of employment," id., so long as it could not be shown that they had done so with the "intent to discriminate." They could require, for example, that all laborers be high school graduates, even though there is no reasonable relationship between a high school education and the requirements of a laborer's job, and even though this

would operate to disproportionatly exclude blacks, who have a substantially lower rate of high school education as a group than whites. They could also continue to use civil service examinations that are not job-related and that disproportionately exclude blacks.

In short, if this Court were to accept Hazelwood's argument, a great number of the employment practices found to be violative of Title VII when engaged in by private employers would go beyond the power of the Congress to proscribe when engaged in by state and local governments. All that Congress could prohibit state and local governments from doing would be engaging in intentional discrimination. Since such intentional discrimination when engaged in by state and local governments is itself violative of the Fourteenth Amendment, Washington v. Davis, 426 U.S. 229 (1976), and would be actionable under 42 U.S.C. §1983, Title VII would be substantively negated, and the objective of Congress sought to be achieved by the enactment of the Equal Opportunity Act of 1972 - to make state and local governments subject to the national policy of equal employment opportunity emobidied in Title VII - would crash upon the rocks of "intent to discriminate." The Equal Opportunity Act of 1972 would turn out to have done no more than to provide Title VII enforcement mechanism and remedies for what otherwise would be a violation of 42 U.S.C. §1983. Since

the courts have broad enforcement powers to remedy a violation of 42 U.S.C. §1983 in any event, see e.g., Carter v. Gallagher, 452 F.2d 315 (8th Cir.), cert. denied, 406 U.S. 950 (1972), all of the congressional "straining" reflected in the enactment of the Equal Employment Opportunity Act of 1972 would have indeed "brought forth a gnat."

Hazelwood should have a heavy burden to persuade this Court that Congress lacks the constitutional power to prohibit racial discrimination in employment on the part of state and local governments beyond that which is now prohibited by the equal protection clause itself and actionable under 42 U.S.C. §1983. It should have a heavy burden to persuade this Court that Congress cannot require the elimination by state and local governments of all "artificial, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." Griggs at 431. It should have a heavy burden to persuade this Court that the Constitution prevents the Congress from proscribing what it has found to constitute racial discrimination in employment when practiced by state and local governments in the same manner as when practiced by private employers. The broad discretion of the Congress that this Court has traditionally recognized when Congress acts to exercise its enumerated powers, whether enumerated in Art.

I, §8, or in the implementing clauses of the Thirteenth, Fourteenth, and Fifteenth Amendments, see e.g., Katzenbach v. Morgan, 384 U.S. 641, 650-651 (1966), dictates that careful consideration be given to whether Congress may, under the exercise of any of its enumerated powers, proscribe what it has found to constitute racial discrimination in employment when practiced by state and local governments in the same manner as when it is practiced by private employers.

It is the position of the amicus curiae that the application to state and local governments of the substantive provisions of Title VII is a necessary and proper exercise of the enumerated powers granted to Congress under the commerce clause of Art. I, §8, under §2 of the Thirteenth Amendment, insofar as Title VII prohibits discrimination on the basis of race, and under §5 of the Fourteenth Amendment.

B. Congress may, under the commerce power, prohibit what it has found to constitute racial discrimination in employment when practiced by state and local governments in the same manner as when practiced by private employers, since such prohibition does not create an impermissible interference with the exercise of "sovereignty" by state and local governments.

There can be no question, of course, that when acting under the commerce power Congress is not limited to prohibiting what otherwise would be a constitutional violation on the part of state and local governments. Fry v. United States, 421 U.S. 542 (1975); United States v. California, 297 U.S. 175 (1936). In National League of Cities v. Usery, 426 U.S. 833 (1976), this Court carved out a limited exception to the otherwise plenary power of Congress over interstate commerce where state and local governments are involved. This "state sovereignty" exception is that, "Congress may not exercise that power so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." 426 U.S. at 855 (emphasis added). In that case the application of federal wage and hours requirements to state and local governments was held to be violative of "state sovereignty," because it would impose substantial increased costs on the carrying out of governmental functions, possibly to the point of requiring the relinquishment of certain governmental activities, 426 U.S. at 846-847, and more importantly perhaps, because it would "displace state policies regarding the manner in which they will structure delivery of those governmental services which their citizens require." Id. at 847.

Hazelwood says that in Usery, this Court held that Congress is not empowered under the commerce power to "impose on states acting 'in their capacities as sovereign governments,' rules governing the way they treat their employees," (Pet Cert., p. 8), and that, therefore, "Title VII of the Civil Rights Act cannot be defended as an exercise of the commerce power when the act is applied to states and their local subdivisions." (Id.). This Court held no such thing. It limited its decision in that case to the authority of Congress to prescribe minimum wages and maximum hours for state employees, noting that, "One undoubted attribute of state sovereignty is the States' power to determine the wages which shall be paid to those whom they employ in order to carry out their governmental functions, what hours those persons will work, and what compensation will be provided where these employees will be called upon to work overtime." 426 U.S. at 845. As it specifically stated, "We hold that insofar as the challenged amendments operate directly to displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, §8, cl. 3." Id. at 852.

The prohibitions of Title VII, however, do not "operate directly to displace the States' freedom to structure integral operations in areas of tradi-

tional governmental functions." The exercise of "state sovereignty" does not require that the states practice what Congress has found to constitute racial discrimination. The "freedom to structure integral operations" does not require that the states impose "artificial, arbitrary and unnecessary barriers that operate invidiously to discriminate on the basis of racial or other impermissible classification." Griggs v. Duke Power Co., supra at 431. All that Title VII mandates is that hiring be "on the basis of job qualifications rather than on the basis of race or color." Griggs at 434. If anything, compliance with its provisions will serve to benefit state and local governments by insuring that they hire the most qualified person for the job and do not impose artificial barriers to employment that will deny jobs to the most qualified person, much in the same manner as the wage freeze in Fry benefited the states by reducing pressures upon state budgets. Since the requirements of Title VII do not improperly interfere with "state sovereignty," they do not come within the limited exception to the otherwise plenary authority of Congress under the commerce power, as set forth in Usery, and the federal government can apply them to the states in the same manner as it can apply them to private employers. Fry v. United States, supra; United States v. California, supra.

Racial discrimination, moreover, is a national problem and requires a national and uniform solution. Even if "state sovereignty" could somehow be construed as including the right to practice what Congress has found to constitute racial discrimination, it would be inconsistent with the need for national and uniform solution to the problem to exempt state and local governments from compliance with the federal standards. In Usery, this Court adopted a balancing approach in determining the constitutionality of a congressional enactment under the commerce power that interfered with the exercise of "state sovereignty," and the holding there was not intended to foreclose the exercise of federal power where "the federal interest is demonstrably greater and where state facility compliance with imposed federal standards would be essential." 426 U.S. at 856 (Blackmun, J., concurring). Although Justice Blackmun was speaking of environmental protection, the need for a national and uniform solution in the area of racial discrimination in employment and for compliance with federal standards by state and local governments is equally apparent. It would be utterly inexplicable, both to racial minorities and to the public at large, if state and local governments could engage in what Congress has found to be racially discriminatory practices that were proscribed for private employers. It would undercut the moral message of Title VII, that there is to be

equality of employment opportunity for all persons, and that all "artificial, arbitrary and unnecessary barriers" shall be removed.

Finally, as in Fry, the conditions making necessary the enactment of Title VII and of the Equal Employment Opportunity Act of 1972 hopefully will some day come to an end. As this Court stated in Usery, "The limits imposed upon the commerce power when Congress seeks to apply it to the states are not so inflexible as to preclude temporary enactments tailored to combat a national emergency." 426 U.S. at 853. While obviously Title VII is different in duration at least from the kind of enactment involved in Fry, that principle is still relevant here. Unlike minimum wage and maximum hours requirements, Title VII does not by its own force impose continuing demands upon state and local governments. Indeed, by ending disriminatory employment practices, state and local governments can avoid federal interference entirely. Once racial discrimination in employment has come to an end, once all "artificial, arbitrary and unnecessary barriers" to employment have been removed, the necessity for the enforcement of Title VII and the alleged interference with "state sovereignty" will have ceased to exist.

The application of Title VII to state and local governments, therefore, is clearly a "necessary and proper" exer-

cise of the commerce power, and considerations of "state sovereignty" do not preclude its application to state and local governments in the same manner as it is applied to private employers.

C. Insofar as Title VII prohibits discrimination on the basis of race, it may be sustained in its application to state and local governments under the powers granted to Congress by §2 of the Thirteenth Amendment.

It is, of course, within the powers granted to Congress under §2 of the Thirteenth Amendment to prohibit racial discrimination in employment. Johnson v. Railway Express Agency, 421 U.S. 454 (1975); McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 223 (1976). Whenever Congress acts under its Thirteenth Amendment enforcement powers, the "congruence problem" that Hazelwood argues exists when Congress acts under its Fourteenth Amendment enforcement powers is completely absent. The power of Congress to prohibit employment practices on the part of state and local governments that have a racially discriminatory effect clearly can be sustained under §2 of the Thirteenth Amendment.

The power granted to Congress under §2 of the Thirteenth Amendment is the power to eliminate all "badges and incidents of servitude," Jones v. Alfred H.

Mayer Co., 392 U.S. 409, 440 (1968), and as this Court there stated, "Surely Congress has the power to decide what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation." Pursuant to this power, it can decide that employment practices which have a racially discriminatory effect are "badges and incidents of slavery," and proscribe their use. Insofar as Title VII prohibits employment discrimination on the basis of race, it should be deemed to have been enacted by Congress pursuant to the powers granted to it by §2 of the Thirteenth Amendment, on the same basis as it has enacted the provisions of 42 U.S.C. §1981.

When Congress acts pursuant to §2 of the Thirteenth Amendment, the "congruence problem," alleged to exist when Congress acts pursuant to §5 of the Fourteenth Amendment, disappears completely, because the enforcement powers of §2 of the Thirteenth Amendment are in no way related to "state action" or to providing a remedy for what would otherwise constitute a violation of §1 of the Thirteenth Amendment. Thus, although racial discrimination practiced by private persons is not violative of §1 of the Thirteenth Amendment or of the Fourteenth Amendment, Civil Rights Cases, 109 U.S. 3 (1883), Congress can prohibit such discrimination by exercising the power granted to it under §2 of the Thirteenth

Amendment. Jones v. Alfred H. Mayer Co., supra. As this Court emphasized in Jones: "As its text reveals, the Thirteenth Amendment 'is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.'... If Congress has the power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective can be thought to exceed the constitutional power of Congress simply because it reaches beyond state action to regulate the conduct of private individuals." 392 U.S. at 438-439. Under §2 of the Thirteenth Amendment, Congress has the power to eliminate all racial barriers, whether imposed by private persons or by state and local governments, and its power to do so is in no way affected by whether the action proscribed would, if practiced by state or local governments, be itself violative of §1 of the Thirteenth Amendment.

Nor can the exercise of the power of Congress under §2 of the Thirteenth Amendment remotely be affected by considerations of "state sovereignty." While the Tenth Amendment may be seen as imposing "state sovereignty" considerations on the exercise of the powers granted to Congress by Art. I, §8,

National League of Cities v. Usery, supra, it cannot, any more than the Eleventh Amendment, affect the exercise of powers granted to Congress by the Civil War amendments. Fitzpatrick v. Bitzer, supra. As this Court there stated, in the context of analyzing congressional power under §5 of the Fourteenth Amendment:

> "There can be no doubt that this line of cases has sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States. The legislation considered in each case was grounded on the expansion of Congress' powers - with the corresponding diminution of state sovereignty--found to be intended by the Framers and made part of the Constitution upon the States' ratification of those Amendments..." 49 L.Ed.2d at 621.

Since Congress has the power under the Thirteenth Amendment to proscribe all "badges and incidents of servitude," and to decide what those "badges and incidents" are, it can prohibit all employment practices of the state and local governments that have a racially discriminatory effect, without regard to whether those practices independently would be unconstitutional as having been motivated by "racially discriminatory intent." The application of

Title VII to Hazelwood in the case at bar, therefore, clearly can be sustained as a proper exercise of the powers granted to Congress under §2 of the Thirteenth Amendment.

D. Under the powers granted to Congress by §5 of the Fourteenth Amendment, Congress can proscribe employment practices by state and local governments that have a racially discriminatory effect on blacks without regard to whether these practices independently would be found unconstitutional by the courts as having been motivated by an intent to discriminate.

The essential thrust of Hazelwood's "congruence argument" is that the power of Congress under §5 of the Fourteenth Amendment is limited to providing a remedy for what independently would be found by the courts to be a violation of §1 of the Fourteenth Amendment. Since, it is argued, there is no constitutional violation in the absence of a showing of intent to discriminate, as defined by this Court in Washington v. Davis, 426 U.S. 229 (1976), and Village of Arlington Heights v. Metropolitan Housing Development Corp., ___U.S.___, 50 L.Ed.2d 450 (1977), Congress cannot proscribe employment practices by state and local governments that have a racially discriminatory effect in the absence of a showing of intent to discriminate. Brief

for Petitioner, pp. 23-32.

An analytically indistinguishable argument was made and emphatically rejected in Katzenbach v. Morgan, 384 U.S. 641 (1966):

> "The Attorney General of the State of New York argues that an exercise of congressional power under §5 of the Fourteenth Amendment that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce. More specifically, he urges that §4(e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides--even with the guidance of a congressional judgment--that the application of the English literacy requirement prohibited by §4(e) is forbidden by the Equal Protection Clause itself. We disagree. Neither the language nor history of §5 supports such a construction. ... A construction of §5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment. It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional or of merely informing the judgment of the judiciary by particularizing the "majestic generalities" of §1 of the Amendment." 384 U.S. at 648-649.

Therefore, although the use of literacy tests had been held not necessarily to be violative of the Fourteenth and Fifteenth Amendments, Lassiter v. Northampton Election Board, 360 U.S. 45 (1959), that consideration was irrelevant in Katzenbach, since Congress had, in the exercise of its powers under §5 of the Fourteenth Amendment, proscribed their use. The only question that the Court had to decide then was whether this proscription constituted a "necessary and proper" exercise of Congress' power under §5 of the Fourteenth Amendment, Id. at 649-650, and this Court held that it did. Id. at 652-658.

Hazelwood argues that Katzenbach "is fairly read to mean only that where an informed and proper basis exists for Congress to determine that specific state

conduct in fact violates the equal protection clause, a congressional prohibition of that conduct may be sustained under Section 5 without this Court's having fully to satisfy itself that it would necessarily reach the same decision unaided by the congressional judgment." Brief for Petitioner, p. 34. As the above-quoted language from Katzenbach demonstrates, this reading of the case is plainly wrong. This Court specifically rejected the argument that the power of Congress under §5 of the Fourteenth Amendment was limited to "informing the judgment of the judiciary by particularizing the 'majestic generalities' of §1 of the Amendment," and declined even to consider the question of whether the application of the English literacy requirement - "even with the guidance of a congressional judgment" - violated the equal protection clause.

The language in Katzenbach quoted by Hazelwood was contained in a discussion of whether the proscription against the use of literacy tests constituted a "necessary and proper" exercise of Congress' power under §5 of the Fourteenth Amendment - which was the only question this Court had to decide - and came after this Court had specifically rejected the "congruence argument" that Hazelwood is again advancing here. To put it another way, in Katzenbach, this Court held that Congress, as well as the courts, had the power under §5 of the Fourteenth Amendment, to decide what it thought constituted "invidious discrimination" in violation of the equal protection clause and to enlarge on what had been held judicially to be unconstitutional. This Court would not substitute its judgment for that of the Congress - and thus it was irrelevant that the Court had upheld the constitutionality of the literacy test involved in Lassister - but would only consider whether the legislation designed to enforce the equal protection clause was "plainly adapted to that end," and whether it was "not prohibited by but is consistent with 'the letter and spirit of the Constitution.'" 384 U.S. at 651. If the legislation satisfied these criteria, it was a "necessary and proper" exercise of the powers granted to Congress under §5 of the Fourteenth Amendment.

The affirmative role of Congress in proscribing practices that it considers to be inconsistent with the guarantees of the Fourteenth Amendment - totally apart from whether what Congress has proscribed independently would be found unconstitutional by the courts - to enlarge on the Fourteenth Amendment, so to speak, was long ago recognized by this Court. As it stated in Ex parte Virginia, 100 U.S. 339, 345-356 (1879):

> "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the pro-

> hibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

It was this principle that was applied in Katzenbach and again in Oregon v. Mitchell, 400 U.S. 112 (1970), where this Court sustained the power of Congress, in the view of some Members of the Court, under §5 of the Fourteenth Amendment, and in the view of other Members of the Court, under §2 of the Fifteenth Amendment, to impose a nationwide ban on the use of literacy tests, even though there were no state-by-state findings showing the discriminatory use of literacy tests to disenfranchise blacks. 400 U.S. at 284 (Opinion of Stewart, J.). Similarly in that case this Court sustained the power of Congress under §5 of the Fourteenth Amendment to proscribe durational residency requirements for voting in Presidential elections, although such requirements had not at that time been held independently to be violative of the Fourteenth Amendment. C.f., Dunn v. Blumstein, 405 U.S. 331 (1972).

Of course, the power of Congress under §5 of the Fourteenth Amendment, like any other power, is not without its limits. It can be used only to enlarge on the Fourteenth Amendment rights that have been

judicially recognized, not to dilute them. Katzenbach v. Morgan, at 651-652, n. 10. Congress cannot in the exercise of that power "overstep the letter or spirit of any constitutional restriction." Oregon v. Mitchell, at 287 (Opinion of Stewart, J.). Nor can it violate any provisions of the Bill of Rights. Katzenbach v. Morgan, at 656-658. In any of these circumstances, the legislation would not be a "necessary and proper" exercise of the powers granted by §5. But in all other circumstances, the broad discretion of Congress under the "necessary and proper" clause applies with equal force to the exercise of its powers granted by §5, and Congress is not circumscribed, as Hazelwood contends, to prohibiting only what would be found by the courts independently to constitute a violation of the Fourteenth Amendment.

There can be no question that Congress had a "rational basis" for concluding that employment practices having a racially discriminatory effect on blacks and other racial minorities were inconsistent with the "letter and spirit of the Constitution." The power of Congress under §5 of the Fourteenth Amendment to insure full equality for blacks in American society surely extends to requiring the removal by state and local governments of all "artificial, arbitrary and unnecessary barriers to employment," and it was entitled to exercise that power with respect to the "consequences of employment

practices, not merely the motivation." As applied to state and local governments, therefore, Title VII, in all of its aspects, can be sustained as a "necessary and proper" exercise of the power granted to Congress by §5 of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed, or in the alternative, the writ of certiorari should be dismissed as having been improvidently granted.

Respectfully submitted,

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April, 1977